



# COMMENTARIES

ON THE

LAW OF ONTARIO.

BEING

BLACKSTONE'S COMMENTARIES  
ON THE LAWS OF ENGLAND,

ADAPTED TO THE

PROVINCE OF ONTARIO.

BY

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VOL. I.

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RIGHTS OF PERSONS.

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COMMENTARIES

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THIS WORK IS DEDICATED  
TO MY FATHER,  
IN GRATEFUL AND AFFECTIONATE  
RECOGNITION  
OF THE CARE AND ANXIETY  
HE BESTOWED ON MY EDUCATION  
AND  
OF OUR SYMPATHY  
IN TASTES AND SENTIMENTS.



## PREFACE.

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**I**N compiling these pages I have been guided by the following principles:

While Blackstone's Commentaries are the foundation of the whole work, both as regards text and arrangement, I have used my own discretion in omitting or compressing. My intention has been to adapt Blackstone's work to the present state of our law in Ontario. I have expunged any historical references which I considered unnecessary, and I have omitted all illustrations by analogy from the civil law, and all classical allusions. Blackstone's statements on political questions, although interesting and original, are not applicable to our time or the social relations existing in Ontario. His High Church and High Tory opinions are continually thrust upon his readers. These features I have entirely obliterated, in many cases with some feeling of regret. My intention is that the reader of this work shall consult the statutes. The Revised Statutes of the Dominion and of the Province, and the subsequent amending Acts, must be always beside any person who wishes to learn the law of this country. As democracy, with its love of change, is the dominant power on this continent, it must have its way in legislation as in everything else. The immutable principles of right and wrong remain fixed, but the modes of the establishment of right and of the redress of wrongs vary with the changing phases of civilization. The rush of modern life causes what is new to-day to be old to-morrow. This influence is felt in legislation, and causes amending Acts to be passed in each session of each Legislature. To facilitate reference to the statute law to date, I have added to each section a complete statutory reference table, containing a list of statutes arranged in the order of subjects dealt with. I have besides placed in the margin of the pages reference to the earliest operative statute relating to the matter in hand. The statements in the text can by reference to the table of statutes at the end of the section be amplified when required.

I have not made many references to cases; my object is to produce a book not intended for lawyers only,

but also for the general community. A knowledge of the laws is necessary to every man who owns property of any description, or who wishes to hold any municipal, civil or political position. A lawyer will find his case law in his digests, and as I propose to state what the law is without showing as a matter of convenience for lawyers where it can be found, I do not consider it necessary to give references to cases except where it cannot be avoided. These explanations are necessary in order that the general purport of the work may be understood. I have not separated Blackstone's original text from my additions or alterations; any person who is curious enough to wish to know how much of the book is mine can easily satisfy that curiosity by comparing the pages with Blackstone's original text. Having had some experience in lecturing, and knowing the difficulty in consulting English text-books, and the absence of any sufficient Canadian legal text-book, except on some isolated subjects, I feel justified in saying that to those who wish to become acquainted with the law of the Province of Ontario the following pages will be useful.

I regret the omission of many of the chief attractions of Blackstone's work, but I have endeavoured to make what I have substituted as intelligible and readable as possible.

The present volume deals with the Rights of Persons. The second volume will contain the law relating to Rights to Things or Real and Personal Property. A third and final volume will deal with the law of Wrongs, not criminal, and the mode of redressing them, that is, by suit or action in Court.

I have not attempted to deal with Criminal Law. The Dominion Criminal Code can be easily obtained, and from it the necessary practical knowledge in that branch of the law can be learned.

R. E. KINGSFORD.

34 MURRAY STREET,  
TORONTO, JUNE, 1896.

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The general scheme of this work is as follows :

**Introductory** (see above.)

**Part I.—Rights**

**Chapter I.—Of Persons** (this Volume)

    "    **II.—To Things** (Vol. II.)

**Part II.—Wrongs** (Vol. III.)

Volume I. thus contains the first chapter of the first part, and is subdivided, as will be seen above, into four sections. I have not divided this volume by chapters because I wished to keep before the reader the unity of the subject. The main subdivisions of Law into Right and Wrongs, and of Rights into Rights of Persons and Rights to Things are liable to be clouded if there is a succession of separate chapters, each apparently as important as the other. By adopting a subdivision of sections the position of any given subject in the science of Law is more easily shewn.

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## INTRODUCTORY.

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## CHAPTER I.

### NATURE AND EXTENT OF LAW IN GENERAL.

Our object is Law which deals with Rights and Wrongs.

K.B.—1

"Law"  
explained.

We must understand what Law is, and will commence with that enquiry.

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey.

This, then, is the general signification of law, a rule of action dictated by some superior being: and, in those creatures which have neither the power to think, nor to will, such laws must be invariably obeyed, so long as the creature itself subsists, for its existence depends on that obedience. But laws, in their confined sense, and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct, that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and free will, is commanded to make use of these faculties in the general regulation of his behavior.

Law of  
Nature.

Man, considered as a creature, must necessarily be subject to the laws of his Creator, God, and as man depends absolutely upon his Maker for everything, it is necessary that he should, in all points, conform to his Maker's will. This will of his Maker is called the Law of Nature, or of God, and that law is superior to any other, as the Creator is.

Being of infinite power, wisdom and goodness, He has prescribed whatever laws He pleased, but He has laid down only such laws as were founded on absolute justice, and has so interwoven the laws He has laid down with the happiness of each individual, that one follows on the observance of the other.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason (whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life), by considering what method will

tend the most effectually to our own substantial happiness.

To arrive at a correct solution of this difficulty, Revelation was necessary, which gave rise to the *Revealed Law*.  
Revealed Law.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. There are, it is true, a great number of indifferent points, in which both the divine law and the natural leave a man at his own liberty, but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficacy: for, with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to, the former. For instance, in the case of murder: this is expressly forbidden by the divine, and demonstrably by the natural law; and from these prohibitions arises the true unlawfulness of crime. Those human laws that annex a punishment to it, do not at all increase its moral guilt, or superadd any fresh obligation in foro conscientiae to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine. But with regard to matters that are in themselves indifferent, and are not commanded or forbidden by those superior laws; such, for instance, as exporting of wool into foreign countries; here the inferior legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so.

If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws than the law of nature and the law of God. Neither could any other law possibly exist: for a law always supposes some superior who is to make it; and in a state of nature we are all equal, without any other superior but Him Who is the Author of our being. But man was formed for society; and, as is demonstrated

Law of  
Nations.

by the writers on this subject, is neither capable of living alone, nor, indeed, has the courage to do it. However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many, and form separate states, commonwealths and nations, entirely independent of each other, and yet liable to a mutual intercourse. Hence arises a third kind of law, to regulate this mutual intercourse, called the Law of Nations; which, as none of these states will acknowledge a superiority in the other, cannot be dictated by any, but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between these several communities: in the construction also of which compacts we have no other rule to resort to but the law of nature; being the only one to which all the communities are equally subject.

I have now explained shortly these great divisions of law, namely, the law of nature, revealed law and the law of nations. I now proceed to the fourth, namely, the law by which particular districts, communities or nations are governed.\* The particular district we have to deal with is the Province of Ontario, for it is that in which we live and to whose laws we are subject.

This law, thus understood, is properly defined to be "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."

It must be noticed:—First. It is a rule, something permanent, uniform and universal, and it is not a compact or agreement.

Second. It is a rule of civil conduct, not moral conduct.

Third. It is a rule prescribed, that is, it must be notified to the people who are to obey it, which may be done in various ways, tradition, proclamation, publication, etc. But the mode of proclamation must be reason-

\* I have discarded Blackstone's name for this law—"Municipal Law." It is confusing in Ontario where Municipal law is well understood to include only laws passed by and for cities, towns, counties, and other subdivisions of the Province.

able and also not ex post facto. When notified, it must be taken to be known, and ignorance will not excuse its breach.

Fourth. It must be prescribed by the supreme power in the state. Whatever form of government any particular country adopts, to the supreme power belongs not only the right but the duty of making laws.

Fifth. The rule so prescribed commands what is right, prohibits what is wrong, and must enforce the one and restrain or redress the other. Therefore, laws are declaratory, defining rights and wrongs: directory, requiring the observance of rights and the abstention from wrongs: remedial, providing for recovery of rights and redress from wrongs: vindicatory, laying down penalties.

This fourth division of law so far as it relates to us <sup>The Law of Ontario.</sup> in the Province of Ontario may be called The Law of Ontario.

When laws are pronounced, doubts may arise as to <sup>Construction of Laws.</sup> their construction; they must be then considered and their true meaning discovered. In time, certain rules of interpretation will be evolved which apply to all laws. Such rules may be briefly stated as follows:

1. Words are generally to be understood in their usual and most known signification.
2. If words happen to be dubious their meaning may be established from the context.
3. As to the subject-matter words must always be taken as having a regard thereto. The object or intention of the law being ascertained, the expression must be construed with reference to it.
4. As to the effects or consequence. Where words either bear none, or a very absurd signification, if literally understood, we must deviate a little from the received sense of them.
5. The most universal and effectual way to discover the true meaning of the law is to consider the reason and spirit of it, or the cause which moved the legislator to enact it. For when the reason ceases, the law itself ought to cease.



There are certain rules particularly laid down for the interpretation of statutes which we will notice later on.

"Equity"  
defined.

From this method of interpreting laws by the reason of them, arises what we call equity; which is thus defined: "The correction of that wherein the law (by reason of its universality) is deficient." For since in laws all cases cannot be foreseen or expressed, it is necessary, that when the general decrees of the law come to be applied to particular cases, there should be somewhere a power vested of defining those circumstances, which (had they been foreseen) the legislator himself would have expressed.

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## CHAPTER II.

### THE NATURE OF THE LAW OF ONTARIO.

What Law  
prevails in  
Ontario?

I have thus traced the origin and divisions of law, the Law of Nature, Revealed Law, the Law of Nations and the Law of Ontario, and explained what is implied in the term "law," and how it may be modified by "equity." Our subject being law, as just explained, how do these definitions apply to us in Ontario? Under what system of law do we live? In order to answer correctly we must review our national history. Quebec was taken in 1759, the rest of Canada in the following year. In their Articles of Capitulation, the French-Canadians requested the right of having their own laws preserved. General Amherst's answer was that they would become subjects of the King of England. Matters were left in this condition until the Treaty of Paris in 1763, when Canada was formally ceded to England, and the people became legally British subjects. In October, 1763, the King issued a proclamation whereby he declared that English law should prevail in Canada, and under the authority of this proclamation courts were erected in 1764. As might be

expected, great dissatisfaction was caused, and the Governor-General, having the power to make ordinances, modified the strict rule of the proclamation by allowing French law as respects tenure of land and rights of inheritance. In fact, also on other points the French law was followed, and in 1774, an Imperial Act, known as the Quebec Act (14 George III. c. 83) was passed, which re-introduced into Canada the French law on civil matters, but retained the English criminal law, which, as to criminal matters, had firmly established itself. The boundaries of Canada were by the Quebec Act greatly increased, and it was a cause of great irritation to the English colonies, now the United States. When, in 1783, their independence was recognized and the United Empire Loyalists withdrew into Canada, the Quebec Act was partially repealed by a new statute, 31 George III. c. 31, passed in 1791, and a new province was carved out of the old Province of Quebec. The latter lost its old name, and became the Province of Lower Canada, while the new one became Upper Canada. For both provinces Legislative Councils and Assemblies were provided. In 1792, the Legislative Assembly of Upper Canada first met at Niagara, and its first statute, 32 George III. c. 1, introduced the laws of England as they stood on the 15th October, 1791, excepting Poor Laws and Bankruptcy Acts. A further provision was made in 1822 by 2 George IV. c. 1, when it was declared that statutes of jeofails\* or of limitations and for the amendment of the law should be adopted as they stood on the 17th January, 1822.

The Provinces of Upper and Lower Canada continued their existence until 1840, when by Imperial Act, 3 & 4 Victoria, c. 35, they were reunited to form the Province of Canada, but as to laws, each province preserved those in force at the union, thus Upper Canada retained English law.

The Province of Canada continued until the year 1867, when the Dominion of Canada was formed by the

\* Statutes allowing amendments in pleadings. They are now superseded.

30 & 31  
Vict. c. 3.

union of Canada, New Brunswick and Nova Scotia under the provisions of Imperial Act, 30 & 31 Vict. c. 3, familiar as the British North America Act. By sec. 129 of that Act, all laws in force in the respective portions of the Dominion were continued, and thus the Province of Ontario, which was erected on the territorial limits of the old Province of Upper Canada, continued and still continues to be governed by English law. These then have been the successive constitutional changes affecting Ontario. It will have been noticed that the English Parliament has always been the authority by which the various ultimate steps have been taken. How was it that the Parliament of England had the right to make these laws for Canada? Briefly, because Canada was first conquered by England, then was ceded by treaty, and thus became an English colony.

Colonies,  
laws for,  
how origi-  
nated.

Plantations or colonies, in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest or ceded by treaties.

Both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between these two species of colonies with respect to the laws by which they are bound; for it has been held, that if an uninhabited country could be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the bankrupt laws, the mortmain Acts, the poor and game laws, the jurisdiction of spiritual courts, and a multitude of other

See 55  
Vict. c. 20  
(Ont.)

provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times, and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in council: the whole of their constitution being also liable to be new-modelled and reformed by the general superintending power of the legislature in the mother country. But in conquered or ceded countries, they have already laws of their own; the King may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country. And therefore the common law of England, as such, has no allowance or authority there; they being no part of the mother country, but distinct (though dependent) dominions. They are subject, however, to the control of the Parliament of England, though (like Ireland, Man and the rest) not bound by any Acts of Parliament, unless particularly named.

We have, accordingly, the right to legislate for ourselves, and we are not bound by Imperial statutes unless expressly named, or unless these statutes are such as necessarily affect the whole empire.\*

\* Examples are The Merchant Shipping Acts, Extradition Acts, Colonial Laws Validity Act, 1865, 28 & 29 Vict. chapter 63 (Imperial Act). This Act recited that doubts had been entertained respecting the validity of divers laws enacted, or purporting to be enacted, by the Legislatures of certain of the colonies, and respecting the powers of such Legislatures, and that it was expedient that such doubts should be removed.

It was therefore provided as follows:—

1. Any law of any colony repugnant to the provisions of any Act of Parliament extending to that colony, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in that colony the force or effect of such Act, must be read subject to the Act, order or regulation, and must to the extent of such repugnancy, but not otherwise, be absolutely void and inoperative.

2. No colonial law is deemed to be void or inoperative on the ground of repugnancy to the law of England unless it is repugnant to the provisions of such Act of Parliament, order or regulation.

3. No colonial law, duly passed with the concurrence of or assented to by the Governor of any colony, is to be deemed to be void or inoperative by reason only of inconsistency with instructions which may have been given to such Governor, even though such instructions may be referred to in any letters patent authorizing the Governor's assent.

Canada having been conquered and ceded, the ancient laws in force in 1759 were continued until changed by the proclamation of October, 1763, and although re-introduced in 1774 were, as we have also seen, withdrawn from what is now Ontario in 1791, and English law again introduced, under which we live to-day.

### CHAPTER III.

#### DIVISIONS OF LAW.

Law of  
England.

The law of England, or the rule of civil conduct prescribed to her inhabitants, and therefore with the necessary modification to us in Ontario, may with sufficient propriety be divided into two kinds: the *lex non scripta*, the unwritten or common law, and the *lex scripta*, the written or statute law.

Unwritten  
Law.

The *lex non scripta*, or unwritten law, includes not only general customs, or the common law properly so called, but also, in England, though not in Ontario, the particular customs of certain parts of the kingdom; and likewise those particular laws that are by custom observed only in certain Courts and jurisdictions.

When I call these parts of our law *leges non scriptæ*, I would not be understood as if all these laws were at present merely oral, or communicated from the former ages to the present solely by word of mouth. It is true,

4 Every colonial Legislature is to be taken to have had and to have full power within its jurisdiction to establish Courts of Judicature, and to abolish and reconstitute them and to alter their constitutions; and every representative Legislature is to be deemed to have, and to always have had, full power to make laws respecting the constitution, powers and procedure of the Legislature.

It is further provided that duly certified copies of these laws shall be received as evidence. This statute is the full Imperial recognition by the Parliament of England of the right of colonies where representative government is established to legislate for themselves and their own Courts of Judicature. The supremacy of the Imperial Legislature is retained within the cases mentioned in the text. So far as Canada is concerned, this Act must also be read subject to the special provisions of the B. N. A. Act.

indeed, that, in the profound ignorance of letters which formerly overspread the whole western world, all laws were entirely traditional; for this plain reason, because the nations among which they prevailed had but little idea of writing. But at present the monuments and evidences of our legal customs are contained in the records of the several Courts of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the profession, preserved and handed down to us from the times of highest antiquity. However, I therefore style these parts of law *leges non scriptæ*, because their original institution and authority are not set down in writing, as Acts of Parliament are, but they receive their binding power, and the force of laws, by long and immemorial usage, and by their universal reception throughout the kingdom.

Common law or unwritten law is divided into three kinds: 1, General customs; 2, Particular customs; 3, Particular laws.

The two latter are unknown here in Ontario, and our common law may be said to be coincident in extent with our whole unwritten law. The Law Merchant and the Practice of Conveyancers are only apparent exceptions to this rule.

The common law is that law by which proceedings and determinations in ordinary Courts of justice are guided and directed. But here a very natural, and very material, question arises: How are these customs or maxims to be known, and by whom is their validity to be determined? The answer is, by the Judges in the several Courts of justice. They are the depositories of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. Their knowledge of that law is derived from experience and study, from the *viginti annorum lucubrationes*, which Fortescue mentions; and from being long personally accustomed to the judicial decisions of their predecessors. And, indeed, these judicial decisions are the principal and the most authoritative evidence that can be given of the existence

How ascertained.

Judicial records.



Precedents.

of such a custom as shall form a part of the common law. The judgment itself, and all the proceedings previous thereto, are carefully registered and preserved under the name of records, in public repositories set apart for that particular purpose, and to them frequent recourse is had when any critical question arises, in the determination of which former precedents may give light or assistance. For it is an established rule to abide by former precedents, where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waiver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from according to his private sentiments: he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet this rule admits of exception, where the former determination is most evidently contrary to reason, much more if it be clearly contrary to the divine law. But even in such cases, the subsequent Judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For, if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was not law; that is, that it is not the established custom of the realm, as has been erroneously determined.

The doctrine of the law, then, is this: that precedents and rules must be followed, unless flatly absurd or unjust; for though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose that they acted wholly without consideration. Upon the whole, however, we may take it as a general rule "that the decisions of Courts of justice are the evidence of what is common law."

From this statement can be easily perceived the value and importance of reports of these decisions which

contain a statement of the facts of the case, of the <sup>Law re-</sup> arguments and of the judgment of the Court.\*

I mentioned that there were two exceptions to the <sup>Law Mer-</sup> rule that the Common Law and Unwritten Law in On-<sup>chant.</sup> tario were coincident, viz., the Law Merchant and the Practice of Conveyancers. The former comprises the particular system of customs used only among one set of the King's subjects, called the custom of merchants, or "lex mercatoria": which, however different from the general rules of the common law, is yet engrafted into it and made a part of it; being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions: for it is a maxim of law that, "cullibet in sua arte credendum est." The usages of the legal profession give rise to another exception in what is called the practice of conveyancers, which has been fre-<sup>Practice</sup> quently recognized by the Judges, and will be referred <sup>of convey-</sup> to and held binding in all matters within its province.

Further mention of these subjects is not necessary, as they are only apparently exceptions. They can be considered as much part of the common law as every other branch of the law of the land.

Let us next proceed to the "leges scriptæ," the writ-<sup>Written</sup> ten laws of the kingdom, which are statutes, Acts or <sup>Law.</sup> edicts made in England by the King's Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in Parliament assembled; in Canada by and with the advice and consent of the Senate and House of Commons, and in Ontario of the Legislative Assembly. The oldest of these now extant and printed in our statute books, is the famous Magna Charta, as <sup>9 Hen. III</sup> confirmed in Parliament, 9 Hen. III., though doubtless <sup>magna</sup> there were many Acts before that time, the records of <sup>charta.</sup> which are now lost, and the determinations of them perhaps at present currently received for the maxims of

\*One of the duties of the Law Society of Upper Canada is to R. S. O. appoint editors and reporters of the decisions of the Court of c. 145, s. 49 Appeal and High Court of Justice for Ontario. The Reports of 50, 51 the Supreme Court and Exchequer Courts of Canada are pub- Vict. c. 16 lished under the supervision of those Courts. The Reporter is (Dom.) appointed by the Governor in Council.

the old common law, thus forming part of the "*leges non scriptæ*."

**Statutes,  
how  
classified.**

Statutes are either general or special, public or private.

The former (general or public) bind the whole community, and Courts of law are bound to take judicial notice of them without their being specially pleaded.

Special or private Acts may be either local, affecting particular places only, or personal, affecting particular persons.

Statutes, again, may be either declaratory of the common law or remedial of some defects therein. By the interpretation Acts, hereafter mentioned, every statute is to be deemed remedial.

**Interpre-  
tation of  
Statutes.**

Rules for the interpretation of statutes have been enacted by the Legislature in the Interpretation Acts, which will be found at the beginning of the Dominion and Ontario Statutes. It may be mentioned here that it has become customary to collect every ten or twelve years the statutes passed in the interval and revise them, so as to have the corrected body of the statute law in convenient shape.

The following are the principal rules which have been laid down by the Interpretation Acts for the construction of statutes:

**R. S. O.  
c. 1.**

1. Every Act, unless where by express provision declared to be a private Act, is deemed a public Act and must be judicially noticed without being specially pleaded. All copies of Acts, public or private, printed by the Queen's printer, are evidence of these Acts and of their contents; and every copy purporting to be printed by the Queen's printer is deemed to be printed by him unless the contrary is shown. 2. A preamble of an Act is deemed part of the Act intended to assist in explaining its purport and object. 3. Every Act is deemed remedial whether its immediate purport be to direct the doing of anything which the Legislature deems to be for the public good or to prevent or punish the doing of anything which it deems to be contrary to the public

good: every Act must therefore receive such fair, large and liberal construction and interpretation as will best insure the attainment of the object of the Act according to its true intent, meaning and spirit. 4. The repeal of any Act or part of an Act does not revive any Act or provision of law repealed by that Act, or prevent the effect of any saving clause in it. 5. If any Act is repealed, nothing done under the old law is affected unless so stated, and all pending states or conditions of the law remain until the new law takes effect; frequently this is made to depend on proclamation of the Lieutenant-Governor. 6. The word "holiday" includes Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, Dominion Day, the days appointed for the celebration of the birthday of the Sovereign, and any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday, or for a general fast or thanksgiving.\* 7. If the time limited by an Act for any proceeding, or if the doing of anything expires or falls upon a holiday, the time limited extends to the day next following which is not a holiday when such thing may be done. 8. The Dominion Interpretation Act contains these further provisions: The repeal of any Act is not deemed to be a declaration that the Act repealed was, or was considered by Parliament to have been, previously in force. 2. The amendment of any Act is not deemed to be a declaration that the law under the Act amended was, or was considered by Parliament to have been, different from the law as it is to become under the amended Act. 3. The repeal or amendment of any Act is not deemed to be or to involve any declaration whatever as to the provisions of the law. 4. By re-enacting

\* The holidays fixed by the Dominion Interpretation Act as amended 57, 58 by 56 Vict. c. 30 (Dom.) are: Sundays, New Year's Day, the Epiphany, Vict. c. 55, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter ss. 1, 2 Monday, Ash Wednesday, Christmas Day, King's or Queen's Birthday, (Dom.) Dominion Day, and any general Thanksgiving or Fast Day. The first Monday in September, to be designated 'Labour Day,' is also a holiday. 53 Vict. In all matters relating to bills of exchange, the following are holidays: c. 33, s. 14 Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, Sovereign's Birthday, Dominion Day, any proclaimed public holiday or Fast Day, also Labour Day. (Dom.)

See also  
58 Vict.  
c. 2.  
Standard  
time  
adopted.

R. S. C.  
c. 1.  
53 Vict.  
c. 30  
(Dom.)

R. S. C.  
c. 1.  
53 Vict.  
c. 7 (Dom.)

an Act, or revising, consolidating or amending it, Parliament is not to be deemed to have adopted the construction which has by judicial decision or otherwise been placed upon the language used in that Act or upon similar Acts.

Equity of  
a statute.

These are the several grounds of the laws over and above which equity is also frequently called in to assist, to moderate, and to explain them. It is impossible to reduce equity to stated rules, and I shall therefore only add that (besides the liberality of sentiment with which our common law Judges ought to interpret Acts of Parliament, and such rules of the unwritten law as are not of a positive kind, which is often called the equity of a statute) our whole modern system of jurisprudence is founded on equity.

58 Vict.  
c. 12,  
s. 53 (12).  
Ibid.  
s. 52 (13).

It is declared as the law of the land that wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. Moreover, specific directions are laid down that law and equity are to be administered concurrently, and that all Courts shall so deal with all matters brought before them that all matters in controversy between the litigant parties may be decided, and all multiplicity of legal proceedings concerning such matters avoided. And, on the other hand, the liberty of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the Judge. And law, without equity, though hard and disagreeable, is much more desirable for the public good than equity without law, which would make every Judge a legislator and introduce most infinite confusion; as there would then be almost as many different rules of action laid down in our Courts as there are differences of capacity and sentiment in the human mind.

Equity also intervenes only in matters of property, for the freedom of our constitution will not permit that in criminal cases a power shall be lodged in any Judge to construe the law otherwise than according to the

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letter. This caution, while it admirably protects the public liberty, can never bear hard upon public individuals. A man cannot suffer more punishment than the law assigns, but he may suffer less. The laws cannot be strained by a partiality to inflict a penalty beyond what the letter will warrant; but, in cases where the letter induces any apparent hardship, the Crown has the power to pardon.

## CHAPTER IV.

### THE LAW OF ONTARIO CONSIDERED AS TO JURISDICTION.

I have now explained the origin of our existing law and its divisions. It remains to discuss its limitations under another aspect, that of jurisdiction.

When, by the British North America Act, the Dominion of Canada was created, with certain provinces, the whole body of Canadian law was distributed between the Dominion and those provinces. That distribution is fully set out in sections 91 to 93 of the Act. The respective jurisdictions are shown in the annexed table, which is extracted from the Act itself.

#### DOMINION OF CANADA.

Section 91 of the Act is as follows:

It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within

#### PROVINCIAL.

Section 92 is as follows:

In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of the Lieutenant-Governor.
2. Direct taxation within the Province in order to the raising of a revenue for Provincial purposes.



## DOMINION OF CANADA.

the classes of subjects next herein-after enumerated; that is to say:

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval service, and Defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the establishment and maintenance of Marine Hospitals.
12. Sea coast and inland fisheries.
13. Ferries between a Province and any British or Foreign Country or between two Provinces.
14. Currency and Coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.

## PROVINCIAL.

3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.
5. The establishment, maintenance, and management of Public and Reformatory Prisons in and for the Province.
7. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following classes:
  - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the limits of the Province:
  - b. Lines of Steam Ships between the Province and any British or Foreign Country:
  - c. Such Works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Can-

## DOMINION OF CANADA.

22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

## PROVINCIAL.

ada or for the advantage of Canada or for the advantage of two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those Courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the Province.

It will be seen that there may be a difficulty in deciding whether a matter is exclusively within the jurisdiction of the provincial legislatures, or whether it may not come within the classes of subjects assigned to the Dominion. The rule of construction accepted is as follows :

If any doubtful subject can be brought clearly within the enumerated specified powers of the provinces it is a provincial matter. If it does not come clearly within such powers the matter is within the jurisdiction of the Dominion only. In the application of this rule to the particular instance in question lies the difficulty.

The following canons are now also recognized: The words "Property and Civil Rights in the Province" in

Rule of construction in ascertaining jurisdiction.

number 13, section 92, have been held to include rights arising from contract which are not in express terms included under section 91, and are not limited to such rights only as flow from the law, e.g., the status of persons. 2. Subjects which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91. 3. Sections 91 and 92 must, in regard to classes of subjects generally described in section 91, be read together, and the language of one interpreted, and where necessary, modified by that of the other, so as to reconcile the respective provisions they contain and give effect to all of them. 4. Each question should be decided as best it can without entering more largely than is necessary upon interpretation of the statute.\*

Settlement  
of consti-  
tutional  
questions.

53 Vict.  
c. 13 (Ont.)

For the purpose of expediting the decision of constitutional and special provincial questions, the Lieutenant-Governor in council may refer to the High Court of Justice or to the Court of Appeal any matter which he thinks fit to refer, and the Court must thereupon dispose of the matter, and certify its opinion on the question referred with its reasons. If the matter relates to the constitutional validity of any Act of the Provincial Legislature, the Attorney-General of Canada must be notified of the hearing in order to appear if he sees fit. Any person interested must also be notified of the hear-

\* I feel that these statements do not sufficiently assist the reader to come to a satisfactory conclusion on any given question of conflict of jurisdiction under the Act. On such matters reference must be had to the decided cases or to special text books on Constitutional Law. I may, however, call attention further to the difference between the Canadian and American systems on the point of jurisdiction. In the American Union all reserve or unenumerated powers belong to the individual States. In Canada all unenumerated powers belong to the Dominion. The intention of the Act is in favour of a strong central government. The Dominion should receive the benefit of any doubt where it is not perfectly clear that the matter in question comes within the classes of subjects assigned to the Provinces. The more consistently this principle of construction is acted upon, the happier for Canada as a country. When the reader has studied the following pages, where the separate legislation of the Dominion and Province on many cognate subjects is described, he will be able to return to the statement of powers conferred by the Act. After hearing what the Parliament of Canada and the Legislative Assembly of Ontario have done without any question as to their power to act, it will be easier to settle doubtful cases by analogy.

ing. The opinion of the Court is deemed a judgment, and an appeal lies from it, as in the case of a judgment in an action. The Dominion has conferred similar powers on the Supreme Court. In cases where the Province of Ontario is interested the Attorney-General must be notified. 54-55 Vict.  
c. 25, s. 4  
(Dom.)

Section 93 of the B. N. A. Act is as follows:

In and for each province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions: Educational  
Questions.

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.

(2) All the powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the Separate Schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3) Where in any province a system of separate or dissentient schools exists by law at the union or is thereafter established by the legislature of the province, an appeal shall lie to the Governor-General in council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(4) In case any such provincial law as from time to time seems to the Governor-General in council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execu-

tion of the provisions of this section and of any decision of the Governor-General in council under this section.

Section 95 of the B. N. A. Act is as follows:

Agriculture and immigration.

In each province the Legislature may make laws in relation to agriculture in the province and immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the Legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

#### B. N. A. ACT.

The following have been the principal cases on questions of jurisdiction which have been carried to the Privy Council:

Subject.	Case.	S. C. R.	Result. Jurisdiction.	Ap. Cas. Vol.
Procedure in civil matters	Valin v. Langlois.....	III. 1. ....	Prov. ....	V. 115.
Canada Temperance Act.	Fredericton v. Regina...	Ibid. 595....	Dom. ....	VII. 829.
Legislation.....	Dobie v. Church Temp.*	.....	Dom. ....	Ibid. 136.
Insurance .....	Citizens v. Parsons.....	IV. 215. ....	Prov. ....	VII. 96.
Escheat .....	Mercer v. Atty.-Gen....	V. 538. ....	Prov. ....	VIII. 767.
Taxation.....	Reed v. Mousseau.....	VIII. 493....	Dom. ....	X. 141.
Education .....	Barrett v. Winnipeg ....	XIX. 374....	Prov. ....	1892, 445.
Prerogative.....	{ Liquidators Mar. Bk. } { v. New Brunswick. }	Ibid .....	Prov. ....	Ibid. 437.
Distribution of debtors' assets .....	{ Atty.-Gen. Ont. v. } { Atty.-Gen. Can.* }	20 O. A. R. 439	Prov. ....	1894, 189.
Education.....	{ Brophy v. } { Atty.-Gen. Man. }	.....	Dom. ....	1895, 202.

\* Not from Supreme Court.

The following are a few of the cases on the B. N. A. Act in the Supreme Court of Canada which have not been carried further than that Court :

SUBJECT.	CASE.	Reported S.C. Reports
Liquor Licenses (Dominion).....	Severn v. Reg.....	II. 70.
Queen's Counsel (Provincial) .....	Lenoir v. Ritchie .....	III. 575.
Maritime Court (Provincial).....	Of Ontario.....	IV. 649.
Warehouse Receipts (Provincial)....	Merchants' Bank v. Smith.....	VIII. 512.
Tidal River (Dominion).....	Queddy R. Co. v. Davidson .....	X. 222.
Penalty for not Paying Taxes (Prov.)	Lynch v. Canada N. W. Land Co....	XIX. 204.
Banking (Dominion) .....	Quirt v. Reg.....	Ibid. 510.
Appointment of Judges (Provincial).	Re County Judges British Columbia.	XXI. 446.

## CHAPTER V.

### 1. BOUNDARIES OF ONTARIO.

By section 6 of the British North America Act, as has already appeared, the parts of the Province of Canada which formerly constituted respectively the Provinces of Upper and Lower Canada were deemed to be severed and to form two provinces; the part which constituted the Province of Upper Canada was constituted the Province of Ontario; the part which formerly constituted the Province of Lower Canada was constituted the Province of Quebec. The boundary between the Provinces of Ontario and Quebec is settled by the Legislatures of Ontario and Quebec agreeing and declaring the line defined in chapter 3 of the Revised Statutes of Ontario as the line between the two provinces. The northerly and westerly boundaries were not defined until 1878, when an arbitration having taken place an award was made which appears as chapter 4 of those Revised Statutes. The Parliament of Canada has assented to these boundaries, and they have been ratified by Imperial Act.

## 2. INTRA-TERRITORIAL DIVISION.

Intra-ter-  
ritoria.  
divisions.

R. S. O.  
c. 5.

The Province of Ontario for intra-territorial purposes is divided into counties, provisional counties, provisional judicial districts, and territorial districts. The counties are forty-two in number: They are for municipal purposes subdivided into townships, incorporated villages, cities and towns. There is one provisional county, there are two provisional judicial districts, three territorial districts and two temporary judicial districts.

For municipal, judicial and other purposes the following counties form unions of counties: (1) Stormont, Dundas and Glengarry; (2) Leeds and Grenville; (3) Northumberland and Durham; (4) Prescott and Russell. For judicial purposes the twelve cities of the province\* are united to and form part of the counties within whose limits they are respectively situate. For municipal purposes these cities, and all towns withdrawn from the jurisdiction of the county, form no part of the counties in which they are situate.

All tracts of land not included in any township may by proclamation be erected into new townships, and thereupon become liable to the laws respecting townships.

In considering the municipal system of the province, we shall see how and when villages, towns and cities may be created.

\* The cities of the Province are Belleville, Brantford, Guelph, Hamilton, Kingston, London, Ottawa, St. Catharines, St. Thomas, Stratford, Toronto, Windsor.

*Statutes Referred to in Introduction with Amendments.*

PAGE.

- 7.. Law of England introduced—32 Geo. III. c. 1; R. S. O. c. 93.
- 7.. Statutes of Jeofails adopted—4 Geo. IV. c. 1; R. S. O. c. 93.
- 13.. Reporters—R. S. O. c. 145; Dom. Stats. 1887 c. 16.
- 14.. Interpretation (Ontario)—R. S. O. c. 1; 1895 c. 2. (Dominion)—R. S. C. c. 1; 1890 c. 33; 1893 c. 30; Dominion Day, R. S. C. c. 111.
- 16.. Equity to Rule—1895 (Ont.) c. 12.
- 20.. Constitutional Questions—1890 (Ont.) c. 13; 1891 (Dom.) c. 25.
- 23.. Boundaries—R. S. O. c. 3; R. S. O. c. 4.
- 24.. Intra-territorial Division—R. S. O. c. 5; 1888 c. 14.



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## PART I.—RIGHTS.

### CHAPTER I.

#### RIGHTS OF PERSONS.

*Preliminary*—The objects of  
Laws are Rights and  
Wrongs.

RIGHTS ARE RIGHTS OF PERSONS,  
RIGHTS OF THINGS.  
WRONGS ARE PRIVATE WRONGS,  
PUBLIC WRONGS.

THE RIGHTS OF PERSONS ARE OF  
TWO SORTS.

1. Such as are due  
from every citizen—  
"duties."
2. Such as belong to him  
—"rights."

PERSONS ARE DIVIDED INTO *natu-  
ral* AND *artificial*.

RIGHTS OF PERSONS ARE EITHER  
*absolute* OR *relative*.

#### SECTION I.

ABSOLUTE RIGHTS OF INDIVI-  
DUALS.

ABSOLUTE RIGHTS DEFINED.

Absolute Duties are not  
enforced by society.

Absolute Rights are in-  
cluded in term natural  
liberty of mankind.

POLITICAL OR CIVIL LIBERTY IS  
NATURAL LIBERTY RESTRAINED  
BY LAWS.

WHERE THERE IS NO LAW THERE  
IS NO FREEDOM.

THE ENGLISH CONSTITUTION  
FAVOURABLE TO FREEDOM.  
SLAVERY PROHIBITED.

RIGHTS DEFINED BY SUCCESSIVE  
STATUTES.

RIGHTS MAY BE REDUCED TO  
Right of personal security.  
Right of personal liberty.  
Right of private property.

I. RIGHT OF PERSONAL SECURITY  
INCLUDES RIGHT TO ENJOY:

1. Life. Destruction of in-  
fant *en ventre sa mere*.

2. Limbs.

Homicide *se defendendo*.

DURESS—Effect of

1. Of imprisonment.

2. *Per minas*.

These rights of life and  
limb determined only  
by death.

Forfeiture of life for crime.  
Statutory provisions  
against killing or tor-  
turing.

3. Body or person.

4. Health.

5. Reputation or good name.

II. PERSONAL LIBERTY OF INDIVI-  
DUALS.

MAGNA CHARTA.

PETITION OF RIGHT.

HABEAS CORPUS ACT, 1 W. &  
MARY 2, R. S. O. c. 70.

LIABILITY TO IMPRISONMENT FOR  
DEBT.

SUSPENSION OF HABEAS CORPUS  
ACT.

DURESS OF IMPRISONMENT.  
EFFECT OF.

NO POWER OF BANISHMENT OR  
EXILE.

EXTRADITION.

III. PROPERTY.

MAGNA CHARTA.

MODERN LAW OF EXPROPRIATION  
FOR PUBLIC PURPOSES.

NO TAXATION WITHOUT REPRE-  
SENTATION.

PETITION OF RIGHT.

18 GEO. III. c. 12.

## LAW HAS PROVIDED SUBORDINATE RIGHTS TO PROTECT RIGHTS OF THE SUBJECT.

1. Parliament.
2. Limitation of the King's prerogative.
3. Right to apply to Courts of Justice.  
Instances of statutes forbidding delays of justice.  
1 W. & Mary, c. 2, denying dispensing power.

No power but in Parliament of altering procedure.

- 16 Car I. c. 10, all matters to be determined by course of law.
4. Right of petitioning.  
Bill of Rights, 1 W. & M. c. 2.  
Public Meetings, R. S. O. c. 187.
5. Keeping arms for defence.

## OF THE RIGHTS OF INDIVIDUALS.

## PRELIMINARY.

I have traced the outlines of law in general—laid down its grand divisions, comprising the Law of Nature, Revealed Law, the Law of Nations and the Law of Ontario, and shown that we have to deal with the latter. I have shown how it has come about that we have as our system the law of England; have explained its divisions and have shown how in Ontario its execution is committed partially to the Dominion and partially to the province.

Objects of law.

Now, as law is a rule of civil conduct, commanding what is right and prohibiting what is wrong, it follows that the primary and principal objects of the law are Rights and Wrongs. I shall follow this division; and shall, in the first place, consider the rights that are commanded, and, secondly, the wrongs that are forbidden by the laws of the land.

Rights.

Rights are liable to subdivision: being either, first, those which concern and are annexed to the persons of men, and are then called "*jura personarum*," or the rights of persons; or they are, secondly, such as a man may acquire over external objects or things, unconnected with his person, which are styled "*jura rerum*," or the rights of things, or better, to things.

Wrongs.

Wrongs are also divisible into, first, Private Wrongs, which being an infringement merely of particular rights, concern individuals only, and are called civil injuries; and secondly, Public Wrongs, which, being a breach of

general and public rights, affect the whole community, and are called crimes and misdemeanors.\*

The objects of the law falling into this division, our account will consist of the three following parts:

1. The rights of persons, with the means whereby such rights may be acquired or lost. Rights of Persons.

2. The rights of things, with the means also of acquiring or losing them.

3. Private wrongs or civil injuries, with the means of redressing them by law.

We are then to consider, first,

The Rights of Persons, with the means of acquiring and losing them.

Now the rights of persons that are commanded to be observed by law are of two sorts: first, such as are due from every citizen, which are usually called civil duties; and, secondly, such as belong to him, which is the more popular acceptation of rights, or "jura." Both may, indeed, be comprised in this latter division; for, as all social duties are of a relative nature, at the same time that they are due from one man, or set of men, they must also be due to another. But I apprehend it will be more clear and easy to consider many of them as duties required from, rather than as rights belonging to, particular persons. Thus, for instance, allegiance is usually, and therefore most easily, considered as the duty of the people, and protection as the duty of the magistrate; and yet they are, reciprocally, the rights as well as duties of each other. Allegiance is the duty of the magistrate, and protection the right of the people.

Persons are also divided by the law either into natural persons, or artificial. Natural persons are such as the God of Nature formed us; artificial are such as are created and devised by human laws, for the purposes of society and government, which are called corporations or bodies politic. Persons are natural or artificial.

\* As stated in the preface, the consideration of crimes and misdemeanors is not included in this volume.

Rights of  
natural  
persons.

The rights of persons, considered in their natural capacities, are also of two sorts, absolute and relative. Absolute, which are such as appertain and belong to particular men, merely as individuals or single persons; relative, which are incident to them as members of society, and standing in various relations to each other. The first, that is, absolute rights, will be now considered.

## SECTION I.

### ABSOLUTE RIGHTS OF PERSONS.

Absolute  
rights of  
persons.

By the absolute rights of individuals we mean those which are so in their primary and strictest sense, such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy whether out of society or in it. But with regard to the absolute duties which man is bound to perform, considered as a mere individual, it is not to be expected that any human municipal law should at all explain or enforce them. For the end and intent of such laws being only to regulate the behaviour of mankind, as they are members of society, and stand in various relations to each other, they have consequently no concern with any other but social or relative duties. Let a man, therefore, be ever so abandoned in his principles, or vicious in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws. But if he makes his vices public, though they be such as seem principally to affect himself (as drunkenness, or the like), they then become, by the bad example they set, of pernicious effect to society; and therefore it is then the business of human laws to correct them. Here the circumstance of publication is what alters the nature of the case. Public sobriety is a relative duty, and therefore enjoined by our laws; private sobriety is an absolute duty, which, whether it be performed or not, human tribunals can never know; and therefore they

can never enforce it by any civil sanction. But with respect to rights, the case is different. Human laws define and enforce as well those rights which belong to a man considered as an individual, as those which belong to him considered as related to others.

For the principal aim of society is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature; but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals. Such rights as are social and relative result from, and are posterior to, the formation of states and societies: so that to maintain and regulate these is clearly a subsequent consideration. And, therefore, the principal view of human laws is, or ought always to be, to explain, protect, and enforce such rights as are absolute, which in themselves are few and simple; and then such rights as are relative, which, arising from a variety of connections, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more attended to, though in reality they are not, than the rights of the former kind. Let us therefore proceed to examine how far all laws ought, and how far the laws of Ontario actually do, take notice of these absolute rights, and provide for their lasting security.

The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endued him with the faculty of free-will. But every man when he enters

Natural  
liberty.

into society gives up a part of his natural liberty, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable than that wild and savage liberty which is sacrificed to obtain it. For no man that considers a moment would wish to retain the absolute and uncontrolled power of doing whatever he pleases: the consequence of which is, that every other man would also have the same power, and then there would be no security to individuals in any of the enjoyments of life. Political, therefore, or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. Hence we may collect that the law which restrains a man from doing mischief to his fellow-citizens, though it diminishes the natural, increases the civil liberty of mankind; but that every wanton and causeless restraint of the will of the subject, whether practised by a monarch, a nobility, or a popular assembly, is a degree of tyranny; nay, that even laws themselves, whether made with or without consent, if they regulate and constrain our conduct in matters of mere indifferences, without any good end in view, are regulations destructive of liberty; whereas, if any public advantage can arise from observing such precepts, the control of our private inclinations, in one or two particular points will conduce to preserve our general freedom in other matters of more importance, by supporting that state of society which alone can secure our independence. Thus the statute of King Edward IV., which forbade the fine gentlemen of those times (under the degree of a lord) to wear pikes upon their shoes or boots of more than two inches in length, was a law that savored of oppression; because, however ridiculous the fashion then in use might appear, the restraining of it by pecuniary penalties could serve no purpose of common utility. But the statute of King Charles II., which

3 Edw. IV.  
c. 4.

prescribed a thing seemingly as indifferent (a dress for <sup>36 Car. II. c. 3.</sup> the dead, who were all ordered to be buried in woollen), was a law consistent with public liberty, for, according to the opinion of that day, it encouraged the staple trade, on which in great measure depends the universal good of the nation. So that laws, when prudently framed, are by no means subversive, but rather inductive of liberty; for (as Mr. Locke has well observed) where there is no law there is no freedom. But then, on the other hand, that constitution or frame of government, that system of laws is alone calculated to maintain civil liberty, which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint.

The idea and practice of this political or civil liberty flourish in their highest vigor under our constitution, where it falls little short of perfection, and can only be lost or destroyed by the folly or demerits of its owners. Experience has shown that it is peculiarly adapted to the preservation of the inestimable blessing of liberty even in the meanest subject. And this spirit of true liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he landed in England, before slavery was abolished throughout the British Empire, fell under the protection of the laws, and so far became a free man; <sup>33 Geo. III. c. 7. §. 1 (U.C.)</sup> though the master's right to his services might possibly still continue. <sup>R. S. O. c. 139, s. 1.</sup> By statute of Parliament of Upper Canada, passed 1793, slavery was prohibited, and remains prohibited to-day.

The absolute rights of Canadians (which, taken in a political and extensive sense, are usually called their liberties), as they are founded on nature and reason, so they are coeval with the form of government transmitted to us from England; though subject at times to fluctuate and change: their establishment (excellent as it was) being still human.

The vigor of its free constitution has always delivered England from its embarrassments; and, as soon as the convulsions consequent on successive struggles ended,



the balance of rights and liberties settled to its proper level; and their fundamental articles were from time to time asserted in Parliament, as often as they were thought to be in danger.

Magna  
Charta,  
Petition of  
Right,  
Habeas  
Corpus,  
Bill of  
Rights,  
Act of  
Settlement

The rights themselves, thus defined by statutes, consist in a number of private immunities; which will appear from what has been premised to be indeed no other than either the residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience; or else those civil privileges which society has engaged to provide in lieu of the natural liberties so given up by individuals. These, therefore, were formerly, either by inheritance or purchase, the rights of all mankind; but, in most other countries of the world being now more or less debased and destroyed, they at present may be said to remain, in a peculiar and emphatical manner, the rights of the people of England, and by them transmitted to the people of Ontario. And these may be reduced to three principal or primary articles: the right of personal security, the right of personal liberty, and the right of private property; because, as there is no other known method of compulsion, or of abridging man's natural free will, but by an infringement or a diminution of one or other of these important rights, the preservation of these inviolate may justly be said to include the preservation of our civil immunities in their largest and most extensive sense.

Three pri-  
mary abso-  
lute rights  
of persons.

Right of  
personal  
security.

I. The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

1. Life.

1. Life is the immediate gift of God; a right inherent by nature in every individual, and it begins, in contemplation of law, as soon as an infant is able to stir in the mother's womb. For if a woman is quick with child, and, by a potion or otherwise, kills it in her womb; or if any one beat her, whereby the child dies in her body, and she is delivered of a dead child, this, though not murder, was, by the ancient law, homicide or manslaughter. Under the Criminal Code any person administering drugs or using instruments to procure abortion,

Code, 1892,  
secs. 272-  
274.

is declared guilty of an indictable offence and is liable to imprisonment for life.

An infant "en ventre sa mere," or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born. An unborn infant may also take by descent, but until its birth the presumptive heir may enter and receive the profits for his own use.

2. A man's limbs (by which for the present we only understand those members which may be useful to him in sight, and the loss of which alone amounts to mayhem by the common law), are also the gifts of the wise Creator, to enable him to protect himself from external injuries in a state of nature. To these, therefore, he has a natural inherent right, and they cannot be wantonly destroyed or disabled without a manifest breach of civil liberty. Both the life and limbs of a man are of such high value, in the estimation of the law of Canada, that it pardons even homicide, if committed "se defendendo," in order to preserve them. For whatever is done by a man, to save either life or member, is looked upon as done upon the highest necessity and compulsion. Therefore if a man, through fear of death or mayhem, is prevailed upon to execute a deed, or to do any other legal act, these, though accompanied with all the other requisite solemnities, may be afterwards avoided, if forced upon him by a well-grounded apprehension of losing his life, or even his limbs, in case of his non-compliance. And the same is also a sufficient excuse for the commission of many other acts. The constraint a man is under in these circumstances is called in law duress, from the Latin "durities," of which there are two sorts: duress per imprisonment, where a man actually loses his liberty, of which we shall presently speak, and duress per minas, where the hardship is only threatened and impending, which is that we are now discoursing of. Duress "per minas" is either for fear of or loss of life, or

for fear of mayhem, or loss of limb. And this fear must be upon sufficient reason. A fear of battery, or being beaten, though never so well grounded, is no duress; neither is the fear of having one's house burned, or one's goods taken away and destroyed; because in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages: but no suitable atonement can be made for the loss of life or limb.

These rights of life and member can only be determined by the death of the person, which was formerly accounted to be either a civil or natural death. The civil death commenced if any man was banished or abjured the realm, by the process of the common law, or entered into religion; that is, went into a monastery, and became there a monk professed; in which case he was absolutely dead in law, and his next heir should have his estate.

This natural life being, as was before observed, the immediate donation of the great Creator, cannot legally be disposed of or destroyed by any individual, neither by the person himself, nor by any other of his fellow-creatures, merely upon their own authority. Yet nevertheless it may, by the Divine permission, be frequently forfeited for the breach of those laws of society which are enforced by the sanction of capital punishments. Whenever the constitution of a state vests in any man or body of men a power of destroying at pleasure, without the direction of laws, the lives or members of the subject, such constitution is in the highest degree tyrannical: and whenever any laws direct such destruction for light and trivial causes, such laws are likewise tyrannical, though in an inferior degree; because here the subject is aware of the danger he is exposed to, and may, by prudent caution, provide against it. The statute law of the Dominion 'does therefore very seldom, more especially of late years, and the common law does never inflict any punishment extending to life or limb, unless upon the highest necessity; and the constitution is an utter stranger to any arbitrary power of killing or maiming the subject without express warrant of law. "Nullus liber homo," says the Great Charter, "aliquo

modo destruat, nisi per legale iudicium parium suorum aut per legem terrae;" which words "aliquo modo destruat," according to Sir Edward Coke, include a prohibition not only of killing and maiming, but also of torturing (to which our laws are strangers), and of every oppression by color of an illegal authority. And it is enacted by the statute 5 Edw. III. c. 9, that no man shall be forejudged of life or limb, contrary to the Great Charter and the law of the land: and again, by statute 28 Edw. III. c. 3, that no man shall be put to death without being brought to answer by due process of law.

3. Besides those limbs and members that may be necessary to a man, in order to defend himself or annoy his enemy, the rest of his person or body is also entitled, by the same natural right, to security from the corporeal insults of menaces, assaults, beating and wounding; though such insults amount not to destruction of life or member.

4. The preservation of a man's health, and such practices as may prejudice or annoy it; and

5. The security of this reputation or good name from the arts of detraction and slander, are rights to which every man is entitled, by reason and natural justice; since without these it is impossible to have the perfect enjoyment of any other advantage or right. But these three last articles (being of much less importance than those which have gone before, and those which are yet to come), it will suffice to have barely mentioned among the rights of persons.

II. Next to personal security, the law of Ontario regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. Concerning which we may take the same observations as upon the preceding article, that it is a right strictly natural; that the laws of Ontario have never abridged it without sufficient cause, and that in this Dominion it cannot ever be abridged at a mere dis-

Magna  
Charta.

3 Car. I.

16 Car. I.  
c. 10.

31 Car. II.  
c.

1 W. & M.  
st. 2, c. 2.

R. S. O.  
c. 70.

cretion of the magistrate, without the explicit permission of the laws. Here again the language of the Great Charter is, that no freeman shall be taken or imprisoned but by the lawful judgment of his equals or by the law of the land; and many subsequent old statutes expressly direct that no man shall be taken or imprisoned by suggestion or petition to the King or his council, unless it be by legal indictment, or the process of the common law. By the Petition of Right, 3 Car. I., it is enacted that no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law. By 16 Car. I. c. 10, if any person be restrained of his liberty by order or decree of any illegal Court, or by command of the King's majesty in person, or by warrant of the Council board or of any of the Privy Council, he shall, upon demand of his counsel, have a writ of habeas corpus to bring his body before the Court of King's Bench or Common Pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain. And by 31 Car. II. c. 2, commonly called the Habeas Corpus Act, the methods of obtaining this writ are so plainly pointed out and enforced, that so long as this statute remains unimpeached, no subject in Ontario can be long detained in prison, except in those cases in which the law requires and justifies such detainment. And, lest this Act should be evaded by demanding unreasonable bail, or sureties for the prisoner's appearance, it is declared by 1 W. & M., st. 2, c. 2, that excessive bail ought not to be required. The Habeas Corpus Act applied only to cases of commitment for criminal or supposed criminal matter, but the Act now extends to every case where a person is restrained of his liberty, except persons imprisoned for debt or by process in any civil suit, or by judgment of any Court.

The liability to imprisonment for debt is recognized by our law, as we shall see later on.

Of great importance to the public is the preservation of this personal liberty; for if once it were left in the power of the highest magistrate to imprison arbitrarily whomsoever he or his officers thought proper

(as in some foreign countries is daily practiced), there would soon be an end of all other rights and immunities.

Some have thought that unjust attacks, even upon life or property, at the arbitrary will of the magistrate, are less dangerous to the commonwealth than such as are made upon personal liberty of the subject. To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government. And yet sometimes when the state is in real danger, even this may be a necessary measure. But the happiness of our constitution is, that it is not left to the executive power to determine when the danger of the state is so great as to render this measure expedient: for it is the Parliament only, or legislative power, that, whenever it sees proper, can authorize the Crown, by suspending the Habeas Corpus Act for a short and limited time, to imprison suspected persons without giving any reason for so doing. This experiment ought only to be tried in cases of extreme emergency, and in these the nation parts with its liberty for a while in order to preserve it forever. The effect of a suspension of the Habeas Corpus Act is to prevent persons who are committed upon certain charges from being bailed, tried or discharged, for the time of the suspension, except under the provisions of the Suspending Act, leaving, however, to the magistrate, or person committing, all the responsibility attending an illegal imprisonment. It is very common, therefore, to pass Acts of Indemnity subsequently for the protection of those who either could not defend themselves in an action for false imprisonment without making improper disclosures of the information on which they acted, or who had done acts not strictly defensible at law, though justified by the necessity of the moment.

*Suspension  
of Habeas  
Corpus  
Act.*

The confinement of the person, in any wise, is an imprisonment. So that keeping a man against his will in a private house, putting him in the stocks, arresting or forcibly detaining him in the street, is an imprisonment. And the law so much discourages unlawful confinement, that if a man is under duress of imprisonment, which we have explained to mean a compulsion by an illegal restraint of liberty, until he seals a bond or the like, he may allege his duress, and avoid the extorted bond. But if a man be lawfully imprisoned, and, either to procure his discharge or on any other fair account, seals a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. To make imprisonment lawful, it must either be by process from the Courts of judicature, or by warrant from some legal officer having authority to commit to prison; which warrant must be in writing under the hand and seal of the magistrate, and express the cause of the commitment, in order to be examined into (if necessary) upon a habeas corpus. If there be no cause expressed the jailer is not bound to detain the prisoner.

A natural and regular consequence of this personal liberty is, that every Canadian may claim a right to abide in his own country so long as he pleases, and not to be driven from it unless by the sentence of the law. The King, indeed, by his royal prerogative, may by order of Court or by arrest for cause, prohibit any of his subjects from going into foreign parts without license. This may be necessary for the public service and safeguard of the commonwealth. But no power on earth, except the authority of Parliament, can send any Canadian out of the land against his will; no, not even a criminal. For exile, and transportation, are punishments at present unknown to the common law, and whenever the latter is now inflicted, it is either by the choice of the criminal himself to escape a capital punishment, or else by the express direction of some modern Parliament. To this purpose the Great Charter declares that no freeman shall be banished, unless by the judgment of his peers, or by the law of the land.

Exile not  
permissible



And by the Habeas Corpus Act, 31 Car. II., c. 2 <sup>1 Car. II. 2.</sup> (that second Magna Charta, and stable bulwark of our liberties), it is enacted that no subject of this realm, who is an inhabitant of England, Wales or Berwick, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, or places beyond the seas (where they cannot have the full benefit and protection of the common law), but that all such imprisonments shall be illegal; that the person who shall dare to commit another contrary to this law shall be disabled from bearing any office, shall incur the penalty of a *præmunire*, and be incapable of receiving the King's pardon; and the party suffering shall also have his private action against the person committing, and all his aiders, advisers and abettors, and shall recover treble costs, besides the damages, which no jury shall assess at less than five hundred pounds.\*

The law is in this respect so benignly and liberally construed for the benefit of the subject, that, though within the realm, the King may command the attendance and service of all his liegemen, yet he cannot send any man out of the realm, even upon the public service, excepting sailors and soldiers, the nature of whose employment necessarily implies an exception. He cannot even constitute a man lord deputy or lieutenant of Ireland against his will, nor make him a foreign ambassador. For this might, in reality, be no more than an honourable exile. The only person who may be sent out of the limits of Canada against his will is a criminal who <sup>Extradition.</sup> has committed some crime or offence in a foreign country, and has since taken refuge in Canada. This delivery is called extradition, and treaties have been made with various foreign states providing for the reciprocal interchange of such persons. We are principally interested in this matter in our relations with the United States of America, our neighbours. It is well to take a short review of our position as far as they are concerned. Their obligation to us is the same as ours to them.

\* 25 & 26 Vict. chapter 20 (Imperial Act) enacts that no writ of habeas corpus shall issue out of England by authority of any Judge or Court of Judicature into any colony or foreign dominion of the Crown provided with a Court of justice authorized to grant that writ.

R. S. C.  
c. 142.

See also  
52 Vict.  
c. 36  
(Dom.)

Provision is made for carrying into effect within the Dominion the surrender of such criminals in the case of any foreign state with which there is an extradition treaty. All Judges of Superior Courts and of the County Courts of any province, and all commissioners appointed for the purpose from time to time in any province by the Governor in council under the great seal of Canada are authorized to act judicially in extradition matters under the Act. No jurisdiction is conferred by the Act in habeas corpus matters. Whenever the Act applies a Judge may issue his warrant for the apprehension of the fugitive, on a foreign warrant of arrest, or of an information or complaint read before him, and on such evidence or on such proceedings as in his opinion would justify the issue of his warrant if the crime of which the fugitive is accused or alleged to have been convicted had been committed in Canada. Every fugitive is liable to be apprehended whether the crime or conviction in respect of which the surrender is sought was committed or took place before or after the date of the arrangement with the foreign state or of the coming into force of the Extradition Act, and whether there is or is not a criminal jurisdiction in any Court of Her Majesty's dominions over the fugitive in respect of the crime. The fugitive is brought before a Judge, who hears the case in the same manner as if the fugitive was brought before a justice of the peace charged with an indictable offence committed in Canada. The Judge must receive upon oath or affirmation the evidence of any witness tendered to show the truth of the charge or the fact of the conviction; he must also receive in like manner any evidence tendered to show that the crime of which the fugitive is accused, or alleged to have been convicted, is an offence of a political character or is for any other reason not an extradition crime, or that the proceedings are being taken with a view to prosecute or punish the fugitive for an offence of a political character. Depositions taken in a foreign state may, if duly authenticated, be received in evidence; the copies used must be duly authenticated by a Judge, magistrate or officer of the foreign state, or under the

official seal of the Minister of Justice, or some other Minister of the foreign state or of the colony. If such evidence is produced as would, according to the law of Canada, prove that the fugitive was convicted of an extradition crime, or if such evidence is produced as would, according to the law of Canada, justify his committal for trial, then the Judge must issue his warrant for the committal of the fugitive, or to remain until surrendered or discharged according to law. When the Judge commits a fugitive to prison, he must at the same time inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus. He must transmit to the Minister of Justice a certificate of the committal, with a copy of all the evidence taken before him not already transmitted, and such report on the case as he thinks fit. A requisition for the surrender of a fugitive criminal may be made to the Minister of Justice by any person recognized by him as a consul or officer of the foreign state resident at Ottawa, or by any Minister of state communicating with the Minister of Justice through the diplomatic representative of Her Majesty in that state, or if neither of these modes is convenient, then in some other manner. No fugitive is liable to surrender if it appears that the offence in respect of which the proceedings are taken is of a political character, or that the proceedings are being taken with a view to prosecute or punish him for an offence of a political character. If the Minister of Justice determines that this is the fact, or that the foreign state does not intend to make a requisition for surrender, he may refuse to make an order for surrender and cancel any order made by him, or any warrant issued by a Judge, and order the fugitive to be discharged. A fugitive must not be surrendered until after the expiration of fifteen days from the date of his committal for surrender, or if a writ of habeas corpus is issued, until after the decision of the Court remanding him. Upon the requisition of the foreign state the Minister of Justice may under his hand and seal order a fugitive who has been committed for surrender to be surrendered to the per-

son who may be duly authorized to receive him. The person to whom the order is directed may hold in custody and convey the fugitive within the jurisdiction of the foreign state, and if he escapes out of custody he may be retaken. If a fugitive is not surrendered and conveyed out of Canada within two months after his committal for surrender, or if a writ of habeas corpus is issued, then within two months after the decision of the Court over and above the time required to convey him from prison by the readiest way out of Canada, any one or more of the Judges of the Superior Courts of the province in which the person is confined, having power to grant a writ of habeas corpus, may order the fugitive to be discharged out of custody. A requisition for the surrender of a fugitive criminal from Canada may be made by the Minister of Justice to the proper functionary in the foreign state. Whenever any person is surrendered by a foreign state in pursuance of an extradition arrangement, he cannot, until after he has been restored or has had an opportunity of returning to the foreign state, be subject to prosecution or punishment for any other offence committed prior to his surrender for which he could not under the arrangement be prosecuted. The extradition treaty with the United States of America is dated 12th of July, 1889. By a previous treaty, dated 9th of August, 1842, provision was made for the extradition of persons charged with murder, piracy, arson, robbery, forgery or the utterance of forged paper. By the later treaty the former treaty was extended to the following crimes:—

Treaty,  
12th July,  
1889.

1. Manslaughter when voluntary.
2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.
3. Embezzlement, larceny, receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.
4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.

5. Perjury, or subornation of perjury.
6. Rape, abduction, child-stealing, kidnapping.
7. Burglary, housebreaking or shopbreaking.
8. Piracy by the law of nations.
9. Revolt, or conspiracy to revolt, by two or more

person board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

10. Crimes and offences against the laws of both countries for the suppression of slavery and slave-trading. It is specially provided that a fugitive criminal must not be surrendered when the offence in respect of which his surrender is demanded is of a political character, or if he proves that the application has, in fact, been made with a view to try or punish him for an offence of a political character. No person surrendered under the treaty is to be liable or tried, or be punished for any political crime or offence, or for any act connected with it committed previously to his extradition. No person can be tried for any offence committed prior to his extradition other than the offence for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered. All articles seized, which were in the possession of the person at the time of his apprehension, are surrendered with him, subject to the rights of third persons. Extradition treaties have been made with nearly every country in the world besides the United States of America. The Parliament of the United Kingdom passed in the years 1870 and 1873 Acts relating to the subject of extradition, but it was declared that if by any law made after the passing of the Imperial Act of 1870 the Legislature of any British possession made provision for carrying into effect the surrender of fugitive criminals, then the Imperial Act was to be suspended. On the 21st of March, 1890, the Parliament of Canada, having meantime passed an extradition Act, these Imperial Acts were suspended. Should the Canadian Act of 1886 be repealed, then the Imperial Acts of 1870 and 1873 would be revived.

33-34 Vict.  
c. 2. (Imp.  
Act.)

Right of  
property.

III. The third absolute right, inherent in every Canadian, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The original of private property is probably founded in nature; but certainly the modifications under which we at present find it, the method of conserving it in the present owner, and of translating it from man to man, are entirely derived from society, and are some of those civil advantages, in exchange for which every individual has resigned a part of his natural liberty. The laws of Ontario are, therefore, in point of honour and justice, extremely watchful in ascertaining and protecting this right. Upon this principle the Great Charter has declared that no freeman shall be disseised or divested of his freehold, or of his liberties or free customs, but by the judgment of his peers or by the law of the land. And by a variety of ancient statutes it is enacted that no man's lands or goods shall be seised into the King's hands against the Great Charter and the law of the land; and that no man shall be disinherited, nor put out of his franchises or freehold, unless he be duly brought to answer, and be forejudged by course of law; and if anything be done to the contrary, it shall be redressed, and holden for none.

5 Edw.  
III. c. 9;

25 Edw.  
III. c. 4;

28 Edw.  
III. c. 3.

So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land.\* In vain it may be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be judge of this common good, and to decide

\* See the provisions of R. S. O. c. 205, *an Act respecting the Public Health*, which appears to contravene this principle. The Act is very stringent and arbitrary in some respects.

whether it be expedient or no. Besides, the public good is in nothing more essentially interested than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases the Legislature alone can, and, indeed, frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the Legislature does is to oblige the owner to alienate his possessions for a reasonable price.

Our whole system of improvement in local municipal matters, and of expropriation for great public improvements, depends on this principle. Nor is this the only instance in which the law of the land has postponed even public necessity to the sacred and inviolable rights of private property. For no Canadian can be constrained to pay any aids or taxes, even for the defence of the realm or the support of the Government, but such as are imposed by his own consent, or that of his representative in Parliament. By the statute of 25 Edward I. <sup>25 Edw. I. cc. 5 and 6.</sup> it is provided, that the King shall not take any aids or tasks but by the common assent of the realm. And what that common assent is, is more fully explained by 34 Edward I. st. 4, c. 1, which enacts, that <sup>34 Edw. I. st. 4, c. 1.</sup> no talliage or aid shall be taken without the assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land: and again, by 14 Edward III. st. 2, c. 1, <sup>14 Edw. III. st. 2 c. 1.</sup> the prelates, earls, barons and common citizens, burgesses and merchants, shall not be charged to make any aid, if it be not by the common assent of the great men and commons in Parliament. And as this fundamental law had been shamefully evaded under many succeeding princes, by compulsive loans, and benevolence extorted without a real and voluntary consent, it was made an article in the Petition of Right, 3 Car. I., that no man shall be compelled to yield any gift, loan, or benevolence, tax, or such like

No taxation without representation.



charge, without common consent by Act of Parliament. Further, by the statute of 1 W. & M. st. 2, c. 2, it is declared that levying money, by pretence or prerogative, without grant of Parliament, or for longer time, or in other manner, than the same is granted, is illegal. Lastly, by 18 Geo. III. c. 12, passed in the year 1778, it is provided that the King and Parliament of Great Britain will impose no tax upon the colonies in America, except duties for the regulation of trade, which must be applied for the use of the colony in which these duties are raised. The enforcement of the claim to tax the colonies, it is well known, partially led to the American revolution.

In the three preceding articles we have taken a short view of the principal absolute rights which appertain to every Canadian. But in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment. It has, therefore, established certain other auxiliary subordinate rights of the subject, which serve principally as out-works or barriers, to protect and maintain inviolate the three great and primary rights of personal security, personal liberty and private property. These are:

Auxiliary  
rights of  
the subject

1. Parlia-  
ment.

1. The constitution, powers and privileges of Parlia-  
ment.

2. Limita-  
tion of pre-  
rogative.

2. The limitation of the King's prerogative by bonds so certain and notorious that it is impossible he should either mistake or legally exceed them without the consent of the people. The former of these keeps the legislative power in due health and vigour, so as to make improbable that laws should be enacted destructive of general liberty; the latter is a guard upon the executive power, by restraining it from acting either beyond or in contradiction to the laws that are framed and established by the other.

3. Courts  
of Justice.

3. A third subordinate right of every person is that of applying to the Courts of justice for redress of injuries.

Since the law is in Ontario the supreme arbiter of every man's life, liberty, and property, Courts of justice

must at all times be open to the subject, and the law be duly administered therein. The emphatical words of Magna Charta, spoken in the person of the King, who, in judgment of law (says Sir Edward Coke) is ever present, and repeating them in all his Courts, are these: "Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam"; "and therefore every subject," continues the same learned author, "for injury done to him in bonis, in terris, vel persona, by any other subject, be he ecclesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay." It were endless to enumerate all the affirmative Acts of Parliament wherein justice is directed to be done according to the law of the land: and what the law is every subject knows, or may know, if he pleases; for it depends not upon the arbitrary will of any Judge, but is permanent, fixed and unchangeable, unless by authority of Parliament. I shall, however, just mention a few negative statutes, whereby abuses, perversions, or delays of justice, especially by the prerogative, are restrained. It is ordained by Magna Charta that no freeman shall be outlawed, that is, put out of the protection and benefit of the laws, but according to the law of the land. By 2 Edw. III. c. 8, and 11 Ric. II. c. 10, it is enacted, that no commands or letters shall be set under the Great Seal, or the little seal, the signet, or privy seal, in disturbance of the law, or to disturb or delay common right: and though such commandments should come, the Judges shall not cease to do right: which is also made part of their oath by statute 18 Edw. III. st. 4. And by 1 W. & M. st. 2, c. 2, it is declared, that the pretended power of suspending, or dispensing with laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by Parliament: for, if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the

16 Car. I.  
c. 10.

law itself. The King, it is true, may erect new Courts of justice, but then they must proceed according to the old-established forms of the common law. For which reason it is declared in the statute 16 Car. I. c. 10, upon the dissolution of the Court of Star Chamber, that neither His Majesty nor his Privy Council have any jurisdiction, power or authority by English bill, petition, articles, libel (which were the course of proceeding in the Star Chamber, borrowed from the civil law), or by any other arbitrary way whatsoever, to examine, or draw into question, determine, or dispose of the lands or goods of any subject of this kingdom; but that the same ought to be tried and determined in the ordinary Courts of justice, and by course of law.

4. Right of  
petitioning

4. If there should happen any uncommon injury, or infringement of the rights before mentioned, which the ordinary course of the law is too defective to reach, there still remains a fourth subordinate right, appertaining to every individual, namely, the right of petitioning the King or either House of Parliament for the redress of grievances.

1 W. & M.  
st. 2, c. 2.

The restrictions, for some there are, which are laid upon petitioning in Canada, while they promote the spirit of peace, are no check upon that of liberty. Care only must be taken lest, under the pretence of petitioning, the subject be guilty of any riot or tumult. It is declared by the Bill of Rights, 1 W. & M. st. 2, c. 2, that the subject has a right to petition; and that all commitments and prosecutions for such petitioning are illegal.

Public  
meetings.

It is further laid down in the statutes that it is the undoubted right of all Canadian subjects to meet together in a peaceable and orderly manner, not only when required to do so in compliance with the express direction of the law, but at such other times as they may deem it expedient to meet for the consideration and discussion of matters of public interest. They may also in this way make known to the King or his representative in this province, or to both or either of the Houses of the Imperial or Dominion Parliaments, or to the Pro-

vincial Legislature their views respecting all matters of public interest; whether such be in approbation or condemnation of the conduct of public affairs. The law considers it expedient to make provision for the calling and orderly holding of these meetings and the better preservation of the public peace when they are called. With this object legislative provision has been made as follows:

Public meetings may be called upon the requisition R. S. O. c. 187. of twelve or more freeholders, citizens or burgesses of the municipality having a right to vote for members to serve in the Legislative Assembly in respect of property held by them in the municipality. On receipt of such requisition the sheriff of the county, or the mayor or other municipal officer of the municipality may call the meeting. A meeting so called becomes a public meeting, and notice must be given by the person calling it that all persons attending the meeting will be within the protection of the Act Respecting Public Meetings; this notice must be issued at least three days before the day upon which the meeting is called, and must set forth the names of the persons signing the requisition or a competent number of them, that the meeting is called under the Act, and that the meeting and all persons attending it will be within the protection of the Act. Upon information on oath before any justice of the peace that any public meeting of the inhabitants or any particular class of the inhabitants of any municipality is appointed to be held at any place within the jurisdiction of the justice of the peace, and that there is reason to believe that great numbers of persons will be present at that meeting, and that it has not been called as a public meeting, then any two justices of the peace may give notice of that meeting, and may declare the meeting and all persons attending it within the protection of the Act, and requiring all persons to take notice of the fact and govern themselves accordingly. The person who calls the meeting must himself attend, and must remain at or near the place appointed for the meeting until it has dispersed. Every person who presides over the meeting

must publicly read the summons or notice calling it. Any person who attempts to interrupt or disturb the meeting may be removed by order of the chairman; the latter may, by an instrument in writing under his hand and with his own view, adjudge any person guilty of interruption or disturbance, and upon that conviction any justice of the peace may forthwith commit the disturber to jail or confinement for any period not exceeding forty-eight hours from the time of the commitment. The chairman is entitled to call for support from all justices of the peace, constables and the public generally. Special constables may be sworn in to aid in preserving the peace. Any action brought against any person for anything done under the authority of the chairman must be brought within twelve months next after the cause of action.

5. Carrying  
weapons.

1 W. & M.  
st. 2 c. 2.

5. The fifth and last auxiliary right of the subject that I shall mention is that of having arms for their defence suitable to their condition and degree, and such as are allowed by law, which is also declared by the same statute, 1 W. & M. st. 2, c. 2, and it is indeed a public allowance under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression. The training of persons, without authority, to the use of arms is, however, prohibited.\*

Code 1892,  
ss. 114, 115

\* By articles 114, 115 of the Criminal Code of 1892, persons coming armed to a public meeting, or within one mile of the place appointed for the meeting, are guilty of an indictable offence and liable to fine and imprisonment. Lying in wait for persons returning from a public meeting with ill intentions, or to provoke a breach of the peace, is also punishable. See also other provisions of the Code as to carrying weapons (Articles 102-117).

## CHAPTER I.

## SECTION 2.

## RELATIVE RIGHTS OF PERSONS (PUBLIC).

THE MOST UNIVERSAL RELATION  
IS THAT OF GOVERNMENT.  
MAGISTRATES AND PEOPLE.  
MAGISTRATES ARE SUPREME AND  
SUBORDINATE.

## SUPREME MAGISTRATES.

Supreme magistracy may be  
vested in one person or  
separated into distinct legis-  
lative and executive autho-  
rities.

## IN ENGLISH CONSTITUTION.

*The Legislative Branch.*

King, Lords and Com-  
mons (Parliament.)

*The Executive.*

The King.

## IN THE DOMINION OF CANADA.

*The Legislative Branch.*

King, Senate and Com-  
mons.

*The Executive Branch.*

The King, represented by  
the Governor-General.

## IN THE PROVINCE OF ONTARIO.

*The Legislative Branch.*

Lieutenant-Governor and  
Legislative Assembly.

*The Executive Branch.*

The Lieutenant-Governor.

THE CONSTITUTION OF PARLIA-  
MENT.

## 1. MANNER AND TIME OF ASSEMBLING

By King's writ.

In Canada and Province by  
instrument under Great  
Seal.

Place of assembly.

Time for assembling.

2. CONSTITUENT PARTS OF A PARLIA-  
MENT.

*The King's Majesty.*

The Governor-General and  
Lieutenant-Governor.

## 1. THE KING'S TITLE.

## 2. THE KING'S COUNCILS.

The King's Privy Council  
for Canada.

The Executive Council of  
Ontario.

## 3. THE KING'S PREROGATIVE.

In England,

In Canada,

In Ontario.

## 4. THE KING'S REVENUE.

In England,

In Canada,

In Ontario.

*The Senate—*

Number and qualifications  
for Senator.

*The House of Commons—*

Number of members.

3. LAWS AND CUSTOMS RELATING TO  
PARLIAMENT.

Power and jurisdiction.

Privileges.

Independence.

Election of members.

## 1. Qualifications of Electors.

Dominion—Provincial.

## 2. Qualifications of Members.

Disqualifications

for Dominion.

for Province.

## 3. Proceedings at Elections

for Dominion.

for Province.

## SUBORDINATE MAGISTRATES.

## SHERIFFS.

1. Keeper of the King's Peace  
—may call on *posse comi-  
tatus*.

2. Must execute process of Su-  
perior Courts.

Bailiffs—of hundreds.

Special Bailiffs,

Bound Bailiffs.

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| <p>GAOLERS.<br/>Statutes regulating conduct of<br/>Sheriffs and Gaolers.</p> <p>CORONERS.<br/>Powers — judicial or ministerial.<br/>Sheriff's substitute.<br/>Elisors.<br/>Inquests—procedure to obtain.</p> <p>JUSTICES OF THE PEACE.<br/>Either <i>virtute officii</i> or appointed.<br/>How determinable.<br/>1. Demise of Crown.<br/>2. Express Writ.</p> | <p>3. <i>Supersedeas</i>.<br/>4. New Commission.<br/>5. Accession to Office of Sheriff or Coroner.<br/>Purport of Commission.<br/>Statutes protecting.</p> <p>POLICE MAGISTRATES.<br/>COUNTY CROWN ATTORNEYS.<br/>COMMISSIONERS OF POLICE.<br/>CONSTABLES.<br/>County Constables.<br/>Provincial Constables.<br/>Boards of Commissioners of Police—Powers of.</p> |
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We are next to treat of the rights and duties of persons, as they are members of society, and stand in various relations to each other. These relations are either public or private, and we will first consider those that are public.

Magistrates and people.

The most universal public relation, by which men are connected together, is that of government; namely, as governors and governed, or, in other words, as magistrates and people. Of magistrates some also are supreme, in whom the sovereign power of the state resides; others are subordinate, deriving all their authority from the supreme magistrate, accountable to him for their conduct, and acting in an inferior secondary sphere.

Supreme Magistracy.

In all tyrannical governments the supreme magistracy, or the right of both making and of enforcing the laws, is vested in one and the same man, or one and the same body of men; and where these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed, in quality of "dispenser of justice," with all the power which he as legislator thinks proper to give himself. But when the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power as may tend to the subversion of its own independence, and therewith of the liberty of the subject. In England, this supreme power is divided into two branches: the one legislative, to wit, the Par-



liament, consisting of King, Lords and Commons, the In Eng-  
land,  
other executive, consisting of the King alone.

In the Dominion of Canada there are also two In Canada,  
B. N. A.  
Act, 88, 9,  
58, 17, 69.  
branches of the supreme power: the legislative consists of the King, the Senate and the House of Commons; the executive is vested in the King. In the Province of Ontario the Legislature consists of the Lieutenant-Governor and the Legislative Assembly of Ontario; the In Ontario  
executive is represented by the Lieutenant-Governor. Within the limits of their respective jurisdictions the powers and authorities of the Legislatures of the Dominion and province are similar, both being, so far as their authority respectively extends, the supreme and absolute authority in the state.

An enquiry into the constitution of Parliament Constitu-  
tion of Par-  
liament.  
involves a consideration of, first, the manner and time of its assembling; secondly, its constituent parts; thirdly, the laws and customs relating to Parliament, considered as one aggregate body; fourthly and fifthly, the laws and customs relating to each house, separately and distinctively taken; sixthly, the methods of proceeding and of making statutes in both houses; and, lastly, the manner of Parliament's adjournment, prorogation and dissolution.

I shall briefly explain the first five points, leaving the other matters as too special in their nature to be investigated here.

I. As to the manner and time of assembling. The Manner  
and time  
of assembling  
of Parlia-  
ment.  
Parliament is to be regularly summoned by the King's writ or letter, issued out of Chancery, by advice of the Privy Council, at least forty days before it begins to sit. It is a branch of the royal prerogative, that no Parliament can be convened by its own authority, or by the authority of any, except the King alone. And this prerogative is founded upon very good reason. For, supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive that all the members, and each of the houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met, and half absented them-

selves, who shall determine which is really the legislative body, the part assembled, or that which stays away? It is therefore necessary that the Parliament should be called together at a determinate time and place, and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts; and, of the three constituent parts, this office can only appertain to the King, as he is a single person, whose will may be uniform and steady, the first in the nation, being superior to both houses in dignity, and the only branch of the Legislature that has a separate existence, and is capable of performing any act at a time when no Parliament is in being. Nor is it an exception to the rule that, on the demise of a King or Queen, if there be then no Parliament in being, the last Parliament revives, and is to sit again for six months, unless dissolved by the successor; for this revived Parliament must have been originally summoned by the Crown.

R. S. C.  
c. 11, s. 1.

R. S. O.  
c. 11, s. 2.

In Canada.

In Ontario

B. N. A.  
Act, secs.  
38, 82.

Ibid. secs.  
16, 68.

Ibid. secs.  
20, 86.

R. S. O.  
c. 11, s. 4.

Constitu-  
ent parts  
of Parlia-  
ment.

If, on the demise of the Crown, there be a Parliament or Legislature in being, neither is dissolved, but they continue and meet as if the demise had not happened.

In Canada. In Canada the Governor-General summons the House of Commons in the Queen's name by instrument under the Great Seal of Canada, and the Lieutenant-Governor summons the Provincial Assembly by similar instrument under the Great Seal of the Province. As to the place of assembly, the seat of Government for the Dominion is Ottawa, that of the Province is Toronto, and there Parliament and the Local House respectively meet.

As to the time of assembling. There must be a session of both the Dominion Parliament and the Provincial Legislature once at least in every year, so that twelve months shall not intervene between the last sitting in one year and the first sitting of the next session.

II. The constituent parts of Parliament are the next objects of our inquiry. And these are in England the King sitting there in his royal political capacity, and the three estates of the realm; the lords spiritual, the lords temporal (who sit, together with the King in one

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house), and the commons, who sit by themselves in another. And the King and these three estates together form the great corporation or body politic of the kingdom, of which the King is said to be caput, principium, et finis. For upon their coming together the King meets them, either in person or by representation; without which there can be no beginning of a Parliament; and he also has alone the power of dissolving them.

In Canada the Parliament consists of the King, an Upper House called the Senate, and the House of Commons. In Ontario, there are only two constituent parts, the Lieutenant-Governor and the Legislative Assembly.

Let us now consider these constituent parts of the sovereign power, or Parliament, each in a separate view.

I. The King's Majesty. Blackstone considers this subject under the heads of 1, The King's title; 2, His royal family; 3, His councils; 4, His duties; 5, His prerogative; 6, His revenue. A discussion of the King's royal family or his duties would be out of place here, and I omit them. On the other points a few words must be said. The executive government and authority of and over Canada is vested in the King, and the command-in-chief of the militia and naval and military forces of and in Canada is also vested in him. As his Majesty cannot well be personally present in Canada, he must be represented by a viceroy or deputy. His official designation is "Governor-General," and his salary is fixed at ten thousand pounds sterling, but the amount may be altered by the Parliament of Canada. He and his successors are a corporation sole; that is, although an individual, in his official capacity he is considered as if he were a corporation. The term will be explained later on.

The constitutional position of the Governor-General is that as representative of the King he carries on the Government of Canada on his behalf and in his name. The duties of the Governor-General are partially defined for him by his commission and instructions. In those issued to Viscount Monck, which were followed as a precedent until 1878. there were contained directions

In Eng-  
land.

In Canada.  
B. N. A.  
Act, ss. 17,  
6, 9.

In Ontario

The King's  
Majesty.

B. N. A.  
Act, ss. 9,  
15.

Governor-  
General.

Ib. s. 105.

R. S. C.  
c. 3.

which were inconsistent with the rights conferred by the British North America Act. On the 5th October, 1878, a change was made at the instance of the Dominion Government. Since the latter date the instructions have been the same to all succeeding Governor-Generals, and the commissions have been practically only formal evidence of the appointment.

To explain the difference between the instructions prior to 1878 and subsequent thereto would require an examination of the two sets of commissions side by side. As these two sets of directions can be examined by the reader in books devoted to the subject of constitutional history, I do not propose to insert them in this place. By the existing instructions the Governor-General is required, after taking the oath of allegiance himself, to administer that oath to any other person to whom the law requires him to administer it. He must communicate to the Privy Council for Canada his instructions; he must, in assenting to laws or reserving them, accompany them with such explanations as he may think fit, and he must transmit to the Home Government fair copies of the proceedings of Parliament. He is empowered to grant a pardon to any accomplice, not being the actual perpetrator of a crime, who gives such information as shall lead to the conviction of the principal offender. He may grant to any offender, convicted of any crime, a pardon or respite of execution, and may remit any fines, penalties or forfeitures which may become due and payable to the Crown; but he shall not in any case, except where the offence has been of a political nature, make it a condition of a pardon or remission of sentence that the offender shall be banished or shall absent himself from Canada. Before pardoning or reprieving any offender he is required to receive, in capital cases, the advice of the Dominion Privy Council, and in other cases, the advice of one at least of his Ministers. In any case where a pardon or reprieve may directly affect the interests of the Empire or any country under the jurisdiction of the Government of the Dominion, the Governor-General must, before pardoning or reprieving, take those interests specially

into his own personal consideration, in conjunction with the advice of his Ministers. Finally, he must not, on any pretence whatever, quit the Dominion without first obtaining leave under the Royal Sign Manual, or through one of the principal Secretaries of State.

The change made in 1878 was in the direction of retrenching the prerogative of the Crown in Canada, as administered by the Governor-General.

For each province there is an officer styled the Lieutenant-Governor, appointed by the Governor-General in council under the Great Seal of Canada. The Lieutenant-Governor holds office during the pleasure of the Governor-General. No Lieutenant-Governor is, however, removable within five years from his appointment, except for cause assigned. The reasons for removal must be communicated in writing within one month after the order is made. They must be also communicated by message to the Senate and House of Commons within a week, if Parliament is sitting, or at latest within one month after the commencement of the next session. The salary of the Lieutenant-Governor is fixed and provided by the Parliament of Canada. The Lieutenant-Governor must, before assuming office, take oaths of allegiance and office, like those taken by the Governor-General. During the absence, illness or other inability of a Lieutenant-Governor, the Governor-General in council may appoint an administrator.

Lieut.-Governor.

B. N. A. Act, secs. 58, 59.

B. N. A. Act, secs. 60, 61, 67.

See 51 Vict. c. 5 (Ont.)

The Lieutenant-Governor and his successors are by law a corporation sole. All bonds, recognizances and other instruments are taken by him and his successors in his name of office, and may be sued for and recovered by him or his successors in their name of office; they do not vest in the personal representatives of the Lieutenant-Governor. The Lieutenant-Governor may, with the advice and consent of the Executive Council, appoint deputies for the purpose of executing marriage licenses, money warrants and commissions.

R. S. O. c. 12.

What is hereinafter said of the King applies to the Governor-General and the Lieutenant-Governor, so far as local circumstances permit. It is not easy to draw

the exact line where what is peculiar to England ends, and where what may safely be applied to Canada begins. To have a just conception of our constitution it is necessary to understand the theoretical position of the Governor-General and Lieutenant-Governor as representatives of the Sovereign. Therefore I propose to explain the attributes of sovereignty as they exist in England, following as far as possible the arrangement I have mentioned.

1. It may not be amiss altogether to pass over the subject of the King's title. It is worthy of notice that the title to the Crown is at present hereditary, though not quite so absolutely hereditary as formerly: and the common stock or ancestor from whom the descent must be derived is also different. Formerly the common stock was King Egbert; then William the Conqueror; afterwards in James the First's time the two common stocks united, and so continued till the vacancy of the throne in 1688: now it is in the Princess Sophia, in whom the inheritance was vested by the new King and Parliament. Formerly the descent was absolute, and the Crown went to the next heir without any restriction: but now, upon the new settlement, the inheritance is conditional, being limited to such heirs only of the body of the Princess Sophia as are Protestant members of the Church of England, and are married to none but Protestants.

Where the magistrate, upon every succession, is elected by the people, and may by the express provision of the laws be deposed (if not punished) by his subjects, this may sound like the perfection of liberty, and look well enough when delineated on paper; but in practice will be ever productive of tumult, contention and anarchy. And, on the other hand, divine, indefeasible, hereditary right, when coupled with the doctrine of unlimited passive obedience, is surely of all constitutions the most thoroughly slavish and dreadful. But when such a hereditary right as our laws have created and vested in the royal stock is closely interwoven with those liberties, which we have seen in a former chapter, are equally the inheritance of the subject, this union will form a con-

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stitution, in theory the most beautiful of any, in practice the most approved, and, I trust, in duration the most permanent. It is the duty of an expounder of our laws to lay this constitution before the student in its true and genuine light: it is the duty of every good Englishman to understand, to revere, to defend it. A true Canadian will in like manner find this constitution worthy of his sincerest admiration, and will, when attacks are made upon it, remember that for generations his ancestors have under its protection enjoyed peace and tranquility. He will see to it that as he received it from his forefathers so will he transmit it to his descendants, and, animated by these feelings, he will guard his country's liberties, knowing them to be founded and secured upon a sure basis.

2. As to the King's Councils.

The King's  
Councils.

The next point of view in which we are to consider the King, is with regard to his Councils. For, in order to assist him in the discharge of his duties, the maintenance of his dignity, and the exertion of his prerogative, the law has assigned him a diversity of councils to advise with.

1. The first of these is the High Court of Parliament, whereof we will hereafter treat at large.

2. Secondly, the peers of the realm are by their birth hereditary councillors of the Crown, and may be called together by the King to impart their advice in all matters of importance to the realm, either in time of Parliament, or, which has been their principal use, when there is no Parliament in being.

We need not here concern ourselves with any discussion of the rights of the peerage as advisers of the King. It is one solely concerning England.

3. A third council belonging to the King are, according to Sir Edward Coke, his Judges of the Courts of law, for law matters. And this appears frequently in our statutes, particularly 14 Edw. III. c. 5, and in books of law.

I have already mentioned that in Canada reference may be made to the Supreme Court of Canada by



Reference  
to Supreme  
Court, 54,  
55 Vict. c.  
25, sec. 4.

the Governor-General in Council of important questions of law or fact touching provincial legislation or the appellate jurisdiction as to educational matters vested in the Governor-General in council by the British North America Act, or by any other Act or law touching the constitutionality of any legislation of the Parliament of Canada, or touching any other matter with reference to which the Governor-General may see fit to exercise the power of reference. The Court is bound to give its opinion upon being requested by the Governor-General to do so. The Province of Ontario has also a similar law for obtaining the advice of the Provincial Court. These proceedings are the only ones in Canada analogous to the power of the King to consult the Judges. Even in England the power has been disputed and is not now exercised.

The Privy  
Council.

4. But the principal council belonging to the King is his Privy Council, which is generally called, by way of eminence, the Council. And this, according to Sir Edward Coke's description of it, is a noble, honourable, and reverend assembly of the King, and such as he wills to be of his Privy Council, in the King's court or palace. The King's will is the sole constituent of a Privy Counsellor; and this also regulates their number, which of ancient time was twelve or thereabouts. Afterwards it increased to so large a number that it was found inconvenient for secrecy and despatch. In modern times no inconvenience arises from the extension of the numbers of the Privy Council, as those only attend who are specially summoned for the particular occasion upon which their advice and assistance are required.

Creation  
of Privy  
Counsel-  
lors.

Privy Counsellors are made by the King's nomination, without either patent or grant; and, on taking the necessary oaths, they become immediately Privy Counsellors during the life of the King that chooses them, but subject to removal at his discretion. As to the qualifications of members to sit at this board, any natural born subject of England is capable of being a member of the Privy Council: taking the proper oaths for security of the Government, and the declaration for security of the church. But, in order to prevent any

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persons under foreign attachments from insinuating themselves into this important trust, as happened in the reign of King William in many instances, it is enacted<sup>12-13 Wm. III. c. 2.</sup> by the Act of Settlement, that no person born out of the dominions of the Crown of England, unless born of English parents, even though naturalized by Parliament, shall be capable of being of the Privy Council.

The duty of a Privy Counsellor appears from the oath of office, which consists of seven articles: 1. To advise the King according to the best of his cunning and discretion. 2. To advise for the King's honour and good of the public, without partiality, through affection, love, meed, doubt or dread. 3. To keep the King's counsel secret. 4. To avoid corruption. 5. To help and strengthen the execution of what shall be there resolved. 6. To withstand all persons who would attempt the contrary. And, lastly, in general, To observe, keep, and do all that a good and true counsellor ought to do to his sovereign lord.

The power of the Privy Council is to inquire into all offences against the Government, and to commit the offenders to safe custody, in order to take their trial in some of the Courts of law. But their jurisdiction herein is only to inquire, and not to punish; and the persons committed by them are entitled to their habeas corpus by statute 16 Car. I, c. 10, as much<sup>16 Car. I. c. 10.</sup> as if committed by an ordinary justice of the peace. And by the same statute the Court of Star Chamber, and the Court of Requests, both of which consisted of Privy Counsellors, were dissolved; and it was declared illegal for them to take cognizance of any matter of property belonging to the subjects of this kingdom. But, in plantation or admiralty causes, which arise out of the jurisdiction of English Courts; and in matters of lunacy or idiocy, being a special flower of the prerogative; with regard to these, although they may eventually involve questions of extensive property, the Privy Council continues to have cognizance, being the Court of appeal in such cases: or, rather, the appeal lies to the King's Majesty himself in council. Whenever, also, a question

arises between two provinces in America or elsewhere, as concerning the extent of their charters and the like, the King in his council exercises original jurisdiction therein, upon the principle of feudal sovereignty. And so likewise when a person claims an island or a province, in the nature of a feudal principality, by a grant from the King or his ancestors, the determination of that right belongs to his Majesty in council: as was the case of the Earl of Derby with regard to the Isle of Man in the reign of Queen Elizabeth, and the Earl of Cardigan and others, as representatives of the Duke of Montague, with relation to the Island of St. Vincent in 1764. But from all the dominions of the Crown, excepting Great Britain and Ireland, an appellate jurisdiction (in the last resort) is vested in the same tribunal; and this judicial authority has lately been remodelled. By this Act a committee styled "the Judicial Committee of the Privy Council" is created, and is now composed of the President of the Council, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lords of Appeal in Ordinary, Lords Justices of Appeal, Judges of the High Court of Justice, if Privy Counsellors, the members of the Privy Council who shall have held any of these offices, and one other Privy Counsellor appointed by the King. Two Privy Counsellors, who shall have held the office of Judge in the East Indies, or any of the King's dominions beyond the seas, shall also attend the sittings of the Judicial Committee. This Court has jurisdiction over all appeals made to the King in council from the Courts of Admiralty, or any other Court in the plantations of America and other his Majesty's dominions abroad.

Judicial  
Committee  
of Privy  
Council.

Privileges  
of Privy  
Counsellors.

3 Hen.  
VII. c. 14.

The privileges of Privy Counsellors, as such (abstracted from their honorary precedence), consist principally in the security which the law has given them against attempts and conspiracies to destroy their lives. For by statute 3 Hen. VII. c. 14, if any of the King's servants, of his household, conspire or imagine to take away the life of a Privy Counsellor, it is felony, though nothing be done upon it. The reason of making this statute, Sir Edward Coke tells us, was because such a con-

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spiracy was, just before the Parliament, made by some of King Henry the Seventh's household servants, and great mischief was like to have ensued thereupon. This extends only to the King's menial servants. But the statute, 9 Anne, c. 16, goes farther, and enacts, that any person that shall unlawfully attempt to kill, or shall unlawfully assault and strike, or wound, any Privy Counsellor in the execution of his office, shall be a felon without the benefit of clergy. This statute was made upon the daring attempt of the Sieur Guiscard, who stabbed Mr. Harley, afterwards Earl of Oxford, with a penknife, when under examination for high crimes in a committee of the Privy Council.

The dissolution of the Privy Council depends upon the King's pleasure; and he may, whenever he thinks proper, discharge any particular member or the whole of it, and appoint another. By the common law also it was dissolved ipso facto by the King's demise: as deriving all its authority from him. But now, to prevent the inconveniences of having no council in being at the accession of a new prince, it is enacted by the statute 6 Anne, c. 7, that the Privy Council shall continue for six months after the demise of the Crown, unless sooner determined by the successor.

The importance of the Privy Council as a whole, it is to be observed, has much diminished. Its judicial business is transacted by the Judicial Committee, and almost all the executive authority is committed to the Cabinet Council, which consists of particular members of the Privy Council who are more especially honoured with the Sovereign's confidence. Their number and selection depend only on the royal pleasure, but they represent the dominant political party of the day. This Cabinet or Ministry usually consists in England of, among other great officers of state, the Lord President of the Council, the First Lord of the Treasury, the First Lord of the Admiralty, and the Secretaries of State for the Home Department, for the Colonies, and for Foreign Affairs.

As to the King's council in Canada. For the Dominion it is styled the King's Privy Council for Canada, King's Council in Canada.

B. N. A.  
Act secs.  
11, 13.

and its function is to aid and advise in the government of Canada. Its members are summoned and chosen by the Governor-General, and are removable by him. When the phrase "the Governor-General in council" is used it means the Governor-General acting by and with the advice of the King's Privy Council for Canada. The Lieutenant-Governor is also assisted and advised by a council known as the Executive Council.

Executive  
Council in  
Province.

Cabinet.

In both Dominion and Province, the principal advisers of the Executive are known as the Cabinet. They hold the chief offices of state, and are responsible to the Legislature for their actions. They are, however, as in England, officially unknown to the constitution.

Provincial  
Executive  
Council,  
B. N. A.  
Act, s. 63.

The Executive Council provided for the province under the British North America Act is to be composed of the following officers: The Attorney-General, the Secretary and Registrar of the province, Treasurer, Commissioner of Crown Lands, Commissioner of Agriculture and Public Works. When the phrase "Lieutenant-Governor in council" is used in the Act it means the Lieutenant-Governor acting by and with the advice of the Executive Council.

R. S. O.  
c. 13.

51 Vict.  
c. 8.

This Executive Council is now composed of such persons as the Lieutenant-Governor nominates. At present the following offices of the Executive Council are actually exercised: The Attorney-General, Provincial Secretary, Provincial Treasurer, Commissioner of Crown Lands, Minister of Agriculture, Commissioner of Public Works and the Minister of Education. The duties of these officers and their departments may be prescribed by order in council, and these duties may be exchanged. A member of the Executive Council cannot also be a member of the House of Commons of Canada.

Executive  
business of  
the Pro-  
vince.

R. S. O.  
c. 15.

See R. S.  
C. c. 19,  
sec. 3.

The executive business of the province is carried on under the supervision of the Executive Council by public officers. All commissions to these officers remain in force notwithstanding the demise of the Crown. An oath of allegiance is required from all these officers; the oath being in the following form: "I, A. B., do sincerely promise and swear, that I will be faithful and bear true

allegiance to Her Majesty Queen Victoria (or the reigning Sovereign for the time being), as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this province dependent on and belonging to the said kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever which may be made against her person, crown and dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I may know to be against her or any of them); and all this I do swear without any equivocation, mental evasion or secret reservation : So help me God."

No sacramental test is required. Those who are employed in the collection, receipt, disbursement, or expenditure of any public money, and who are required to give security, must, not later than three months after appointment if absent from Ontario, and within one month if in Ontario, furnish the requisite bonds. The security of guarantee companies may be accepted in the case of sheriffs, registrars, Division Court clerks or bailiffs.

These public officers form the provincial public service. The departmental staff is composed of two divisions, the ordinary division and a special division; the special division includes all offices requiring professional or other skill; the ordinary division covers all other offices. No senator or member of the House of Commons can be appointed to any position in the service of the Government of Ontario to which any emolument is attached. This exclusion does not apply to justices of the peace, coroners or notaries public. The general oversight of the various departments is committed to the following officers: the deputy of the Attorney-General, the deputy of the Minister of Education, the Assistant Commissioner of Crown Lands, Assistant Provincial Secretary, Assistant Commissioner of Public Works, Assistant Treasurer and Clerk of the Executive Council. The office of Clerk of the Executive Council may be held, and is usually held, by one of the other deputy heads. Examinations may

Provincial  
public ser-  
vice.

R. S. O.  
c. 14.

R. S. O.  
c. 17.

be held before entrance to the service; all civil servants must take the oath of allegiance, and also make a declaration that they will not ask or receive any recompense except their salary. The Lieutenant-Governor in council has the power of issuing commissions to inquire into any matter connected with the good government of the province or its public business, or relating to the administration of justice where there is no special law relating to the matter; these commissions have the power of taking evidence and can compel the attendance of witnesses and production of documents, and report to the Lieutenant-Governor.

Public ser-  
vice of  
Canada.

R. S. C.\*  
c. 17.

R. S. C.  
cc. 18, 19.

The civil service of Canada is constituted in very much the same way as the provincial public service; the deputy heads of departments have similar powers to those of the deputy heads of the provincial service. Provision is made for superannuation. Public officers must give security and take the oath of allegiance in the same way as public officers employed by the province. On the demise of the Crown no commission need be renewed, but a proclamation must be issued by the Governor-General authorizing all persons in office as officers of Canada to continue as such.

Depart-  
ments of  
public  
service.

The departments of the public service of the Dominion are as follows :

1. Justice.

R. S. C.  
c. 21.

(1) The Department of Justice, over which presides the Minister of Justice. His duties are to act as official legal adviser of the Crown. He must see that the administration of public affairs is in accordance with law. He must superintend all matters connected with the administration of justice in the Dominion, so far as Dominion control extends. He advises upon the legislative Acts and proceedings of the Provincial Legislatures. He also acts as Attorney-General of Canada. As such he advises the heads of departments on matters of law. He settles all instruments issued under the Great Seal. He superintends penitentiaries and the prison system of Canada. He has the conduct of all litigation for or

\* The amendments to the statutes referred to in the side notes are collected in a table at the end of this section.



against the Crown or any public department. In other respects he has the same power and authorities as the Attorney-General of England. The appointment of a Solicitor-General is also authorized. He must assist the Attorney-General in the counsel work of the department.

(2) The Department of the Interior, presided over by the Minister of the Interior. He has the control and management of the affairs of the North-West Territories, and also of all Crown lands which are the property of the Dominion not specially under the control of the Public Works Department, or of the Departments of Railways and Canals, or Militia and Defence, Marine Hospitals and Lighthouses, and St. Paul's, Sable and Portage Islands are also excepted from his control. The Geological Survey of Canada is attached to this department. The Minister of the Interior acts also as Superintendent-General of Indian Affairs.

50-51 Vict.  
c. 14 (Dom)

R. S. C.  
c. 22.

53 Vict. c.  
11 (Dom).

(3) The Department of Agriculture, presided over by the Minister of Agriculture. The subjects under his control are:

3. Agriculture.

R. S. C.  
c. 24.

1. Agriculture.

2. Immigration and Emigration.

3. Public Health and Quarantine.

4. The Marine Hospital, Quebec.

5. Arts and Manufactures.

6. The Census, Statistics and Registration of Statistics.

See as to  
Patents  
and Industrial  
Designs, 50-  
51 Vict. c.  
12 (Dom).

7. Patents of Invention.

8. Copyright.

9. Industrial Designs and Trade Marks.

10. Experimental Farm Stations.

(4) The Department of Marine and the Department of Fisheries, presided over by the Minister of Marine and Fisheries. His duties are to supervise the following subjects:

4. Marine  
and  
Fisheries.

1. Pilots and pilotage, and decayed pilots' fund.

2. The construction and maintenance of light-houses, lightships, fog alarms, buoys and beacons.

55-56 Vict.  
c. 17(Dom)

3. Ports and harbours, harbour commissioners and harbour masters.
4. Piers, wharves and breakwaters and the collection of tolls in connection therewith, and the minor repairs on such properties.
5. Steamships and vessels belonging to the Government of Canada engaged in connection with services administered by the Minister of Marine and Fisheries.
6. Sick and distressed seamen, and the establishment, regulation and maintenance of marine and seamen's hospitals.
7. River and harbour police.
8. Humane establishments.
9. Lifeboat service, and rewards for saving life.
10. Inquiries into causes of shipwrecks and casualties, and the collection of wreck statistics.
11. Inspection of steamboats and examination of engineers and inquiry into accidents to steamers and the conduct of engineers.
12. Examination of masters and mates.
13. Registration and measurement of shipping and preparation of returns of registered shipping of Canada.
14. Meteorological and magnetic services.
15. Tidal observations on the coasts of Canada.
16. Climatology of Canada.
17. Inspection of vessels carrying live stock from Canada to Europe.
18. Shipping of seamen, shipping masters and shipping offices.
19. Winter communication between Prince Edward Island and the mainland by steamer and ice-boats.
20. Hydrographic surveys.
21. Administration of deck-load law and the subject of deck and load lines.
22. Removal of wrecks and other obstructions in navigable waters.

23. Sea coast and inland fisheries, and the management, regulation and protection thereof, and everything relating thereto, and the payment of fishing bounties.
24. Any other duty or power assigned to the Minister of Marine and Fisheries by the Governor-General in council; and generally all such matters as refer to the marine and fisheries of Canada.

(5) Department of the Secretary of State, presided over by the Secretary of State for Canada. He has charge of the state correspondence, and keeps all state records and papers not specially transferred to other departments. He also acts as Registrar-General, and as such registers all instruments under the Great Seal, and all other instruments such as warrants of extradition. The King's printer is also attached to this department. His duty is to superintend the printing of the statutes and all Government proclamations and departmental reports and papers.

5. Secretary of State.

R. S. C. c. 26.

The Department of Public Printing and Stationery is to be presided over by the Secretary of State or such other member of the King's Privy Council for Canada as the Governor-General shall direct.

R. S. C. c. 27.

(6) Department of Finance and the Treasury Board. The Department of Finance is under the supervision of the Minister of Finance. The department under the management of the Minister has the supervision of all matters relating to the financial affairs and public accounts, revenue and expenditure of Canada not assigned to any other department. The Treasury Board consists of any five Ministers to be nominated by the Governor-General. This board acts as a committee of the King's Privy Council for Canada on all matters relating to finance, revenue and expenditure or public accounts referred to it by the Council. It has power to require from any public department or from any person all necessary books, papers, or statements. The account books for the Dominion accounts are also planned by this board.

6. Finance

R. S. C. c. 28.

Treasury Board.

**7. Customs****O. S. C.  
c. 32.**

(7) Department of Customs, presided over by the Minister of Trade and Commerce or the Minister of Finance, as the Governor in council directs. This department has control and management of the duties of customs and of the customs service under the direction of the Controller of Customs.

**8. Inland Revenue.****R. S. C.  
c. 34.**

(8) Department of Inland Revenue, presided over in the same manner as the Department of Customs, and under the direction of the Controller of Inland Revenue. This department has the control and management of the following matters:

- (a) The collection of all duties of excise.
- (b) The collection of stamp duties and the preparation and issue of stamps and stamped paper, except postage stamps.
- (c) Internal taxes.
- (d) Standard weights and measures.
- (e) The administration of the laws affecting the culling and measurement of timber, masts, spars, deals and staves, and other articles of a like nature, and the collection of slidage and boomage dues.
- (f) The collection of bridge and ferry tolls and rents.
- (g) The collection of tolls on the public canals and of matters incident thereto, and of the officers and persons employed in that service.

**9. Post Office.****R. S. C.  
c. 35.**

(9) Post Office Department, for the superintendence and management, under the direction of the Postmaster-General, of the postal service of Canada.

**10. Public Works.****R. S. C.  
c. 36.**

(10) Department of Public Works, presided over by the Minister of Public Works. The Minister has the management, charge and direction of the following matters: Dams, hydraulic works, the construction and repair of harbours, piers and works for improving the navigation of any water-slides, dams, piers, booms and other works for facilitating the transmission of timber; roads and bridges, public buildings, vessels, dredges, scows, tools, implements and machinery for the improvement of navigation; the telegraph lines, and all other

property which now belong to Canada, and also the works and properties acquired, constructed, extended, enlarged, repaired or improved at the expense of Canada, or for the acquisition, construction, repairing, extending, enlarging or improving of which any public money is voted and appropriated by Parliament (except works for which money has been appropriated as a subsidy only), and every work required for any such purpose; and also all such portions of the property known as the "Ordnance Property" as was transmitted to the Government of the late Province of Canada, or to the Government of Canada by the Government of the United Kingdom, and afterwards placed under the control of the department, with the exceptions following, that is to say :—

- (a) Such public works as have been or are hereafter lawfully transferred to any province forming part of Canada;
- (b) Such public works as have been or are hereafter leased, sold or otherwise lawfully transferred to municipalities, incorporated companies or others, unless the same are subject to be and are resumed by Her Majesty in virtue of the provisions of any Act, or of any lease, sale or transfer thereof, or relating thereto;
- (c) Such public works as are placed under the control and management of any other Minister or department;
- (d) Such public works as have been or are hereafter by proclamation abandoned or left to the control of municipal or local authorities.

2. The Minister shall also have the management, charge and direction of the heating, maintenance and keeping in repair of the Government buildings at the seat of Government, and any alterations from time to time requisite therein, and the supplying of furniture and fittings, or repairs to the same.

- (11) Department of Railways and Canals, under the management of the Minister of Railways and Canals.

11. Railways and Canals.

R. S. C.  
c. 37.

This Minister has the management, charge and direction of all Government railways and canals, and of all works and property appertaining or incident to them; he must direct the construction, maintenance and repair of all railways and canals constructed or maintained at the expense of Canada, and placed under his management and control.

12. Militia  
and  
Defence.

R. S. C.  
c. 41.

(12) Department of Militia and Defence, under the direction of the Minister of Militia and Defence. He is charged with, and is responsible for the administration of militia affairs, including all matters involving expenditure, and of the fortifications, gunboats, ordnance, ammunition, arms, armouries, stores and other military accoutrements belonging to Canada. He has the initiative in all military affairs involving the expenditure of money; he has also the control and management, and is charged with the maintenance and repair of all military belongings, forts and fortifications in Canada.

R. S. C.  
c. 42.

A royal military college has been established at Kingston, under the superintendence of a military officer called the commandant. Professors and other instructors are appointed, and the college is governed and its affairs administered according to the regulations made by the Governor in council. All reports relating to the college are transmitted to the Department of Militia and Defence.

13. Trade  
and Com-  
merce.

50, 51 Vict.  
c. 10.

(13) Department of Trade and Commerce. Established to deal with all such matters of trade and commerce as are not assigned to any other department.

In all the above departments deputies are appointed who take charge, as in the provincial departments, of the general routine work. The policy of the department is initiated by the Minister in charge; all his colleagues in the Ministry are responsible equally with himself for the administration of the department. The duty of members of both Houses of Parliament is to criticize and regulate the administration of all matters confided to the various Ministers. This branch of the public service may be probably more correctly described as administrative than as executive; in theory the Executive,

as has been stated, is the Governor-General for the Dominion and the Lieutenant-Governor for the province. In practice the members of the King's Cabinet Council for Canada and of the Executive Council for the province are really the Executive; what they decide upon must be carried out.

We have now discussed the two first particulars relating to the King's Majesty. It will now be our duty to consider the next attribute of his sovereign power, namely, prerogative. This subject will be explained as it exists, first, in England, then in the Dominion and Province.

One of the principal bulwarks of civil liberty, <sup>The King's Prerogative in England.</sup> or, in other words, of the British Constitution, is the limitation of the King's prerogative by bounds so certain and notorious, that it is impossible he should ever exceed them, without the consent of the people, on the one hand; or without, on the other, a violation of that original contract which in all states impliedly, and in England expressly, subsists between the prince and the subject. It will now be our business to consider this prerogative minutely, to demonstrate its necessity in general, and to mark out in the most important instances its particular extent and restrictions; from which consideration this conclusion will evidently follow, that the powers which are vested in the Crown by the laws of England are necessary for the support of society, and do not intrench any farther on our natural liberties than is expedient for the maintenance of our civil. A great deal that is laid down with regard to prerogative may, at first sight, appear inapplicable to Canada. It may be thought that, as the monarch resides only in England, and can have but a representative in a country separated so far from where he rules as Canada, his personal or political attributes can have little influence in this country, or be any more than curious speculation. On reflection, this impression will be found erroneous. In the first place, every person should understand the constitution of the country in which he lives. If he accepts that constitution he must be prepared to give an intelligent adhesion



to its principles. How can he do so unless he has had laid before him those principles and examined them? It must be acknowledged that even in England the powers and prerogatives attributed to the King have been in large part transferred to the people as represented in Parliament. Even with this admission, what is said of the King must be said of the state. In the most republican form of government the people, under whatever denomination they are collectively styled, claim for themselves the same prerogatives which are by our constitution allowed to the monarch. In England a great deal of the power theoretically attributed to the monarch still remains in his hands. Great changes have taken place, but the Limited Monarchy of England still exists, and, so far as human knowledge can foresee, will continue to exist. We in Canada have accepted that form of government, as accepted by England. Unless we understand how the prerogatives of the Crown have arisen in England, and how they are limited there, we cannot understand the theory and practice of our Government in Canada. It is best, therefore, to explain the theoretical limits of prerogative as they are understood in England, and then examine how far these limits extend in Canada. When we have concluded the examination of this part of our subject, it will be a satisfaction to know that our faith in what many of us have accepted only as tradition will stand the test of the closest scrutiny. Changes have been inevitably brought about by time, by the spread of education, and by the increased interchange of ideas among the nations of the world. In spite of these changes, the English Constitution remains in its essential features the same, and no Canadian can have any sentiment but that of pride and gratification that the good fortune of his country has started her in her national career under auspices so favourable.

Explana-  
tion of  
term "Pre-  
ogative."

By the word prerogative we usually understand that special pre-eminence which the King has over and above all other persons, and out of the ordinary course of the common law, in right of his legal dignity. It signifies, in its etymology (from *prae* and

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rogo), something that is required or demanded before, or in preference to, all others. And hence it follows that it must be in its nature singular and eccentric; that it can only be applied to those rights and capacities which the King enjoys alone, in contradistinction to others, and not to those which he enjoys in common with any of his subjects; for if once any one prerogative of the Crown could be held in common with the subject, it would cease to be a prerogative any longer.

Prerogatives are either direct or incidental. The direct are such positive substantial parts of the royal character and authority as are rooted in and spring from the King's political person, considered merely by itself, without reference to any other extrinsic circumstances; as the right of sending ambassadors, of creating peers, and of making war or peace. But such prerogatives as are incidental bear always a relation to something else, distinct from the King's person; and are indeed only exceptions, in favor of the Crown, to those general rules that are established for the rest of the community: such as, that no costs shall be recovered against the King; that the King can never be a joint-tenant; and that his debt shall be preferred before any debt of his subjects. These, and an infinite number of other instances, will better be understood when we come regularly to consider the rules themselves, to which these incidental prerogatives are exceptions. And therefore we will at present only dwell upon the King's substantive or direct prerogatives.

These substantive or direct prerogatives may again be divided into three kinds: being such as regard, first, the King's royal character; secondly, his royal authority; and, lastly, his royal income. These are necessary to secure reverence to his person, obedience to his commands, and an affluent supply for the ordinary expenses of government; without all of which it is impossible to maintain the executive power in due independence and vigour. Yet, in every branch of this large and extensive Dominion, our free constitution has interposed such seasonable checks and restrictions as may curb it from trampling on those liberties which it was meant to

Direct Prerogatives.

Incidental Prerogatives.

Three kinds of Direct Prerogatives.

secure and establish. The enormous weight of prerogative, if left to itself (as in arbitrary governments it is), spreads havoc and destruction among all the inferior movements: but, when balanced and regulated (as with us) by its proper counterpoise, timely and judiciously applied, its operations are then equable and certain, it invigorates the whole machine, and enables every part to answer the end of its construction.

We shall commence by considering the two first of these divisions, which relate to the King's political character and authority: or, in other words, his dignity and regal power; to which last the name of prerogative is frequently narrowed and confined. The other division, which forms the royal revenue, will receive subsequent examination.

The Royal  
Dignity.

First, then, of the royal dignity. The law ascribes to the King, in his high political character, not only large powers and emoluments, which form his prerogative and revenue, but likewise certain attributes of a great and transcendant nature; by which the people are led to consider him in the light of a superior being, and to pay him that awful respect which may enable him with greater ease to carry on the business of government. This is what I understand by the royal dignity, the several branches of which we will now proceed to examine.

Sovereignty.

24 Hen.

VIII. c. 12

25 Hen.

VIII. c. 28

1. And, first, the law ascribes to the King the attribute of sovereignty or pre-eminence. His realm is declared to be an empire, and his Crown imperial, by many Acts of Parliament, particularly the statutes 24 Hen. VIII. c. 12, and 25 Hen. VIII. c. 28; which at the same time declare the King to be the supreme head of the realm in matters both civil and ecclesiastical, and of consequence inferior to no man upon earth, dependent on no man, accountable to no man. The meaning of the Legislature, when it uses these terms of empire and imperial and applies them to the realm and Crown of England, is only to assert that our King is equally sovereign and independent within these his dominions, as any emperor is in his empire, and owes no kind of subjection to any other potentate upon earth. Hence it is that no

suit or action can be brought against the King, even in civil matters, because no Court can have a jurisdiction over him. For all jurisdiction implies superiority of power: authority to try would be vain and idle without an authority to redress; and the sentence of a Court would be contemptible unless that Court had power to command the execution of it: but who shall command the King? Hence it is likewise, that by law the person of the King is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary; for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment. If any foreign jurisdiction had this power, as was formerly claimed by the Pope, the independence of the kingdom would be no more; and, if such a power were vested in any domestic tribunal, there would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of the sovereign legislative power.

Are then, it may be asked, the subjects of England totally destitute of remedy in case the Crown should invade their rights, either by private injuries, or by public oppressions? To this we may answer, that the law has provided a remedy in both cases.

Remedies  
provided  
for subjects  
against  
Crown.

And, first, as to private injuries: If any person has, in point of property, a just demand upon the King, he must petition him in his Superior Courts, by what is called a petition of right, where his Judges will administer right as a matter of grace, though not upon compulsion. And, as to personal wrongs: it is well observed by Mr. Locke "The harm which the sovereign can do in his own person not being likely to happen often, nor to extend itself far; nor being able by his single strength to subvert the laws, nor oppress the body of the people (should any prince have so much weakness and ill-nature as to endeavour to do it),—the inconvenience therefore of some particular mischiefs, that may happen sometimes when a heady prince comes to the throne are well recompensed by the peace of the public and security of the government, in the person of the chief magistrate being thus set out of the reach of danger."

Private  
injuries.

Public  
oppression

Next, as to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law has also assigned a remedy. For, as a king cannot misuse his power without the advice of evil counsellors and the assistance of wicked ministers, these men may be examined and punished. The constitution has therefore provided, by means of indictments and parliamentary impeachments, that no man shall dare to assist the Crown in contradiction to the laws of the land. But it is at the same time a maxim in those laws, that the King himself can do no wrong: since it would be a great weakness and absurdity in any system of positive law to define any possible wrong without any possible redress.

Impeach-  
ment.

Absolute  
perfection.

II. Besides the attribute of sovereignty, the law also ascribes to the King, in his political capacity, absolute perfection. The King can do no wrong. Which ancient and fundamental maxim is not to be understood as if everything transacted by the government was of course just and lawful, but means only two things. First, that whatever is exceptionable in the conduct of public affairs is not to be imputed to the King, nor is he answerable for it personally to his people: for this doctrine would totally destroy that constitutional independence of the Crown which is necessary for the balance of power in our free and active, and therefore, compounded constitution. And, secondly, it means that the prerogative of the Crown extends not to do any injury; it is created for the benefit of the people, and therefore cannot be exerted to their prejudice.

The King, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing: in him is no folly or weakness. And therefore if the Crown should be induced to grant any franchise or privilege to a subject contrary to reason, or in any wise prejudicial to the commonwealth, or to a private person, the law will not suppose the King to have meant either an unwise or an injurious action, but declares that the King was deceived in his grant; and thereupon such grant is rendered void, merely upon the foundation of fraud and deception, either by or upon

those agents whom the Crown has thought proper to employ. For the law will not cast an imputation on that magistrate whom it entrusts with the executive power, as if he was capable of intentionally disregarding his trust; but attributes to mere imposition (to which the most perfect of sublunary beings must still continue liable) those little inadvertencies which, if charged on the will of the prince, might lessen him in the eyes of his subjects.

Yet still, notwithstanding this personal perfection which the law attributes to the sovereign, the constitution has allowed a latitude of supposing the contrary in respect to both Houses of Parliament; each of which, in its turn, has exerted the right of remonstrating and complaining to the King even of those acts of royalty which are most properly and personally his own; such as messages signed by himself, and speeches delivered from the throne. And yet, such is the reverence which is paid to the royal person, that though the two houses have an undoubted right to consider these acts of state in any light whatever, and accordingly treat them in their addresses as personally proceeding from the prince, yet among themselves (to preserve the more perfect decency and for the greater freedom of debate) they usually suppose them to flow from the advice of the administration. But the privilege of canvassing thus freely the personal acts of the sovereign either directly, or even through the medium of his reputed advisers, belongs to no individual, but is confined to those august assemblies: and there, too, the objections must be proposed with the utmost respect and deference.

In further pursuance of this principle, the law also determines that in the King can be no negligence, or laches, and therefore no delay will bar his right. *Nul- lum tempus occurrit regi* has been the standard maxim upon all occasions; for the law intends that the King is always busied for the public good, and therefore has not leisure to assert his right within the times limited to subjects. In the King also can be no stain or corruption of blood: for if the heir to the Crown were attainted of treason or felony, and afterwards the Crown

See 9 Geo.  
III. c.16.

Regina v.  
McCor-  
mack, 18  
U. C. R.  
131.

should descend to him, this would purge the attainder ipso facto. Neither can the King, in judgment of law, as king, ever be a minor or under age; and therefore his royal grants and assents to Acts of Parliament are good, though he has not in his natural capacity attained the legal age of twenty-one.

*Perpetuity*

III. A third attribute of the King's majesty is his perpetuity. The law ascribes to him, in his political capacity, an absolute immortality. The King never dies. Henry, Edward or George may die; but the King survives them all. For immediately upon the decease of the reigning prince in his natural capacity, his kingship or imperial dignity, by act of law, without any interregnum or interval, is vested at once in his heir; who is, *eo instanti*, king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise; *demissio regis, vel coronæ*: an expression which signifies merely a transfer of property; for, when we say the demise of the Crown, we mean only that, in consequence of the disunion of the King's natural body from his body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual.

*Concentration of authority.*

We are next to consider those branches of the royal prerogative which invest this our sovereign lord, thus all-perfect and immortal in his kingly capacity, with a number of authorities and powers; in the exertion whereof consists the executive part of government. This is wisely placed in a single hand by the British Constitution, for the sake of unanimity, strength and despatch. Were it placed in many hands, it would be subject to many wills: many wills, if disunited and drawing different ways, create weakness in a government; and to unite those several wills, and reduce them to one, is a work of more time and delay than the exigencies of state will afford. The King of England is therefore not only the chief, but properly the sole, magistrate of the nation; all others acting by commission from and in due subordination to him.



With regard to foreign concerns, the King is the delegate or representative of his people. It is impossible that the individuals of a state, in their collective capacity, can transact the affairs of that state with another community equally as numerous as themselves. Unanimity must be wanting to their measures, and strength to the execution of their counsels. In the King therefore centre all the rays of his people; otherwise foreign powers would scruple to enter into any engagement, that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority in regard to foreign powers is the act of the whole nation: what is done without the King's concurrence is the act only of private men. And so far is this point carried by our law, that it has been held that should all subjects of England make war with a king in league with the King of England, without the royal assent, such war is no breach of the league, and still it remains a very great offence against the laws of nations, and punishable by our laws, according to the circumstances of the case.

I. The King, therefore, considered as the representative of his people, has the sole power of sending ambassadors to foreign states, and receiving ambassadors at home.

*Ambassadors.*

II. It is also the King's prerogative to make treaties, leagues and alliances with foreign states and princes. For it is by the law of nations essential to the goodness of a league that it be made by the sovereign power, and then it is binding upon the whole community, and in England the sovereign "quoad hoc" is vested in the person of the King. Whatever contracts, therefore, he engages in, no other power in the kingdom can legally delay, resist, or annul. And yet, lest this plentitude of authority should be abused to the detriment of the public, the constitution (as was hinted before) has here interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as from criminal motives advise or conclude any treaty which shall afterwards be judged to derogate from the honour and interest of the nation.

*Treaties*

War and  
Peace.

III. Upon the same principle the King has also the sole prerogative of making war and peace. For it is held by all the writers on the law of nature and nations, that the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into society, and is vested in the sovereign power; and this right is given up, not only by individuals, but even by the entire body of people, that are under the dominion of a sovereign. It would indeed be extremely improper that any number of subjects should have the power of binding the supreme magistrate and putting him, against his will, in a state of war. Whatever hostilities, therefore, may be committed by private citizens, the state ought not to be affected thereby; unless that should justify their proceedings, and thereby become partner in the guilt. Such unauthorized volunteers in violence are not ranked among open enemies, but are treated like pirates and robbers. So that in order to make a war completely effectual, it is necessary in England that it be publicly declared and duly proclaimed by the King's authority; and then all parts of both the contending nations, from the highest to the lowest, are bound by it. And wherever the right resides of beginning a national war, there also must reside the right of ending it, or the power of making peace. And the same check of parliamentary impeachment, for improper or inglorious conduct in beginning, conducting, or concluding a national war, is in general sufficient to restrain the ministers of the Crown from a wanton and injurious exertion of this great prerogative.

Letters of  
Marque  
and  
Reprisal.

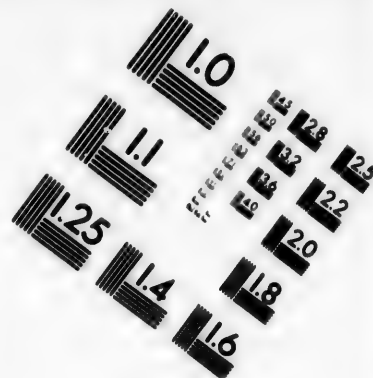
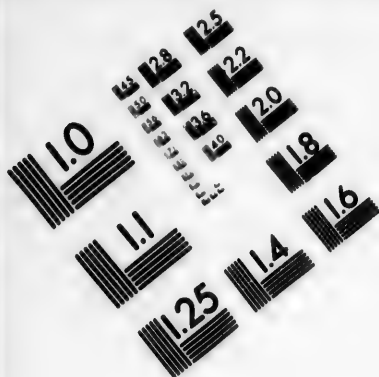
IV. But, as the delay of making war may sometimes be detrimental to individuals who have suffered by depredations from foreign potentates, our laws have in some respects armed the subject with powers to impel the prerogative, by directing the ministers of the Crown to issue letters of marque and reprisal upon due demand: the prerogative of granting which is nearly related to, and plainly derived from that other of making war; this being indeed only an incomplete state of hostilities, and generally ending in a formal denunciation of war. These letters are grantable by the law of nations, whenever the subjects of one state are oppressed and injured by

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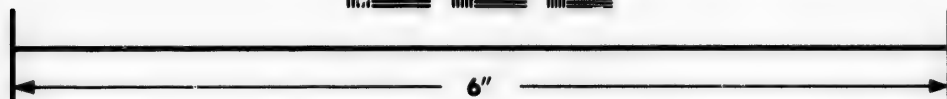
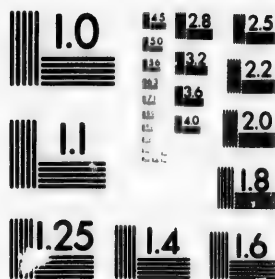
those of another, and justice is denied by that state to which the oppressor belongs. In this case letters of marque and reprisal (words used as synonymous; and signifying, the latter a taking in return, the former the passing the frontiers in order to such taking) may be obtained, in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found. And indeed this custom of reprisals seems dictated by nature herself; for which reason we find in the most ancient times very notable instances of it. But here the necessity is obvious of calling in the sovereign power to determine when reprisals may be made, else every private sufferer <sup>4 Hen. V. c. 7.</sup> would be a judge in his own cause. In pursuance of which principle, it is with us declared, by the statute 4 Hen. V. c. 7, that, if any subjects of the realm are oppressed in time of truce by any foreigners, the King will grant marque in due form to all that feel themselves grieved. The modern practice is to empower the Lord High Admiral or the Commissioners of the Admiralty to grant commissions to the owners of armed ships or privateers, and the prizes captured are divided according to a contract entered into between the owners and the captain and crew of the ship. But the owners, before the commission is granted, are obliged to give security to the Admiralty to make compensation for any violation of treaties between those powers with whom the nation is at peace, and they must also give security that the ship shall not be employed in smuggling.\*

V. Upon exactly the same reason stands the prerogative of granting safe-conducts, without which, by the law of nations, no member of one society has a right to intrude into another. Great tenderness is shown by our laws, not only to foreigners in distress, but with regard also to the admission of strangers who come spontaneously. For so long as their nation continues at peace with ours, and they themselves behave peaceably, they are under the King's protection; though liable to

\* Privateering is prohibited by convention with certain foreign powers, but not with all. The United States of America have not become party to the convention and it is with them that reprisal by privateering is most likely to take place. The passage in the text therefore must stand as law. <sup>Treaty of Paris, 1856</sup>



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be sent home whenever the King sees occasion. But no subject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our subjects, unless he has letters of safe-conduct; which by divers ancient statutes must be granted under the King's great seal, and enrolled in Chancery, or else are of no effect: the King being supposed the best judge of such emergencies as may deserve exception from the general law of arms. But passports under the King's sign manual, or licenses from his ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity.

Protection  
to foreign  
merchants

Indeed, the law of England, as a commercial country, pays a very particular regard to foreign merchants in innumerable instances. One I cannot omit to mention: that by Magna Charta it is provided that all merchants (unless publicly prohibited beforehand) shall have safe-conduct to depart from, to come into, to tarry in, and to go through England, for the exercise of merchandise, without any unreasonable imposts, except in time of war; and, if a war breaks out between us and their country, they shall be attached (if in England) without harm of body or goods, till the King or his chief justiciary be informed how our merchants are treated in the land with which we are at war; and, if ours be secure in that land, they shall be secure in ours.

Prerogatives  
in domestic  
affairs.

These are the principal prerogatives of the King respecting this nation's intercourse with foreign nations; in all of which he is considered as the delegate or representative of his people. But in domestic affairs he is considered in a great variety of characters, and from thence there arises an abundant number of prerogatives.

Power of  
rejecting  
Acts of  
Parliament

I. First, he is a constituent part of the supreme legislative power, and, as such, has the prerogative of rejecting such provisions in Parliament as he judges improper to be passed. I shall only further remark, that the King is not bound by any Act of Parliament, unless he be named therein by special and particular

only  
place

words. The most general words that can be devised ("any person or persons, bodies politic, or corporate, etc.") affect not him in the least, if they may tend to restrain or diminish any of his rights or interests. For it would be of most mischievous consequence to the public if the strength of the executive power were liable to be curtailed without its own express consent by constructions and implications of the subject. Yet, where an Act of Parliament is expressly made for the preservation of public rights and the suppression of public wrongs, and does not interfere with the established rights of the Crown, it is said to be binding as well upon the King as upon the subject: and, likewise, the King may take the benefit of any particular Act, though he be not specially named.

II. The King is considered, in the next place, as the *Generalissimo*, or the first in military command, within the kingdom. The great end of society is to protect the weakness of individuals by the united strength of the community: and the principal use of government is to direct that united strength in the best and most effectual manner to answer the end proposed. Monarchical government is allowed to be the fittest of any for this purpose: it follows therefore, from the very end of its institution, that in a monarchy the military power must be trusted in the hands of the prince.

In this capacity, therefore, of general of the kingdom, the King has the sole power of raising and regulating fleets and armies. The prerogative of enlisting and of governing them was solemnly declared by the statute 13 Car. II. c. 6, to be in the King alone: for that the sole <sup>13 Car. II. c. 6.</sup> supreme government and command of the militia within all His Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, ever was and is the undoubted right of His Majesty, and his royal predecessors, Kings and Queens of England, and that both or either House of Parliament cannot, nor ought to, pretend to the same.

This statute, it is obvious to observe, extends not only to fleets and armies, but also to forts, and other places of strength, within the realm; the sole preroga-



tive as well of erecting as manning and governing of which belongs to the King in his capacity of general of the kingdom.

Ports and  
havens.

It is partly upon the same, and partly upon a fiscal foundation to secure this marine revenue, that the King has the prerogative of appointing ports and havens, or such places only, for persons and merchandise to pass into and out of the realm, as he in his wisdom sees proper. By the feudal law all navigable rivers and havens were computed among the regalia, and were subject to the sovereign of the state. And in England it has always been holden that the King is lord of the whole shore, and particularly is the guardian of the ports and havens, which are the inlets and gates of the realm: and therefore, so early as the reign of King John, we find ships seized by the King's officers for putting in at a place that was not a legal port.

Beacons,  
light-  
houses and  
sea-marks.

The erection of beacons, lighthouses, and sea-marks, is also a branch of the royal prerogative, whereof the first was anciently used in order to alarm the country, in case of the approach of an enemy; and all of them are signally useful in guiding and preserving vessels at sea by night as well as by day. For this purpose the King has the exclusive power, by commission under his great seal, to cause them to be erected in fit and convenient places, as well upon the lands of the subject as upon the demesnes of the Crown: which power is usually vested by letters patent in the office of the Lord High Admiral.

Exporting  
arms and  
ammuni-  
tion.

To this branch of the prerogative may also be referred the power vested in His Majesty, by statute, of prohibiting the exportation of arms and ammunition out of England under severe penalties.

Confining  
subjects  
within the  
realm.

The King has likewise the right, whenever he sees proper, of confining his subjects to stay within the realm, or of recalling them when beyond the seas. By the common law, every man may go out of the realm for whatever cause he pleaseth, without obtaining the King's leave: provided he is under no injunction of staying at home (which liberty was expressly declared in King John's great charter, though left out in that of Henry

III.); but, because that every man ought of right to defend the King and his realm, therefore the King at his pleasure may command him by his writ that he go not beyond the seas, or out of the realm, without license; and if he do the contrary, he shall be punished for disobeying the King's command.

At present everybody has, or at least assumes, the liberty of going abroad when he pleases. Yet undoubtedly if the King, by writ of "*ne exeat regno*," under his great seal or privy seal, thinks proper to prohibit him from so doing; or if the King sends a writ to any man, when abroad, commanding his return; and in either case the subject disobeys; it is a high contempt of the King's prerogative, for which the offender's lands shall be seized till he return; and then he is liable to fine and imprisonment. The writ of "*ne exeat regno*," now called an order of arrest, is also granted by Courts for the furtherance of justice in civil suits where, on a case sufficiently clear, a party under some liability meditates flight; and resort may be had to this mode of restraining a departure from the realm in the case of absconding debtors.

Order of  
arrest.

III. Another capacity in which the King is considered in domestic affairs, is as the fountain of justice and general conservator of the peace of the kingdom. By the fountain of justice the law does not mean the author or original, but only the distributor. Justice is not derived from the King, as from his free gift; but he is the steward of the public, to dispense it to whom it is due. He is not the spring, but the reservoir, from whence right and equity are conducted, by a thousand channels, to every individual. The original power of judicature, by the fundamental principles of society, is lodged in the society at large: but as it would be impracticable to render complete justice to every individual by the people in their collective capacity, therefore every nation has committed that power to certain select magistrates, who with more ease and expedition can hear and determine complaints; and in England this authority has immemorially been exercised by the King or his substitutes. He therefore has alone the right of erect-

Fountain  
of justice.

ing Courts of judicature: for though the constitution of the kingdom has intrusted him with the whole executive power of the laws, it is impossible as well as improper that he should personally carry into execution this great and extensive trust: it is consequently necessary that Courts should be erected, to assist him in executing this power; and equally necessary that, if erected, they should be erected by his authority. And hence it is that all jurisdictions of Courts are either mediately or immediately derived from the Crown, their proceedings run generally in the King's name, they pass under his seal, and are executed by his officers.

It is probable, and almost certain, that in very early times, before our constitution arrived at its full perfection, our Kings in person often heard and determined causes between party and party. But at present, by the long and uniform usage of many ages, our Kings have delegated their whole judicial power to the Judges of their several Courts; which are the grand depositories of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction regulated by certain and established rules, which the Crown itself cannot now alter but by Act of Parliament. And, in order to maintain both the dignity and independence of the Judges in the superior Courts, it is enacted by the statute 13 W. III. c. 2, that their commissions shall be made (not, as formerly, "*durante bene placito*," but) "*quamdiu bene se gesserint*," and their salaries ascertained and established; but that it may be lawful to remove them on the address of both Houses of Parliament. And now, by the noble improvements of that law in the statute 1 Geo. III. c. 23, the Judges are continued in their offices during their good behaviour, notwithstanding any demise of the Crown.

13 W. III.  
c. 2.

1 Geo. III.  
c. 23.

Criminal  
proceed-  
ings.

In criminal proceedings, or prosecutions for offences, it would still be a higher absurdity if the King personally sat in judgment; because in regard to these he appears in another capacity, that of prosecutor. All offences are either against the King's peace, or his Crown and dignity: and are so laid in every indictment. For though in their consequences they generally seem

(except in the case of treason and a very few others) to be rather offences against the kingdom than the King ; yet, as the public, which is an invisible body, has delegated all its powers and rights, with regard to the execution of the laws, to one visible magistrate, all affronts to that power, and breaches of those rights, are immediately offences against him, to whom they are so delegated by the public. He is, therefore, the proper person to prosecute for all public offences and breaches of the peace, being the person injured in the eye of the law. And hence also arises another branch of the prerogative, Pardoning that of pardoning offences: for it is reasonable that he only who is injured should have the power of forgiving. Of prosecutions and pardons I need not treat more at large here; and only mention them in this cursory manner to show the constitutional grounds of this power of the Crown, and how regularly connected all the links are in this vast chain of prerogative.

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but Independence of Judges. not removable at pleasure, by the Crown, consists one main preservative of the public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary Judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law; which, though legislators may depart from, yet Judges are bound to observe. Were it joined with the executive, this union might soon be an over-balance for the legislative. For which reason, by the statute of 16 Car. I. c. 10, which abolished the Court of Star Chamber, effectual care is taken to remove all judicial 16 Car. I. c. 10. power out of the hands of the King's Privy Council ; who, as then was evident from recent instances, might soon be inclined to pronounce that for law which was most agreeable to the prince or his officers. Nothing, therefore, is more to be avoided, in a free constitution,

than uniting the provinces of a Judge and a Minister of state.

**Legal  
ubiquity.**

A consequence of this prerogative is the legal ubiquity of the King. His Majesty, in the eye of the law, is always present in all his Courts, though he cannot personally distribute justice. His Judges are the mirror by which the King's image is reflected. It is the regal office, and not the royal person, that is always present in Court, always ready to undertake prosecutions, or pronounce judgment, for the benefit and protection of the subject. And from this ubiquity it follows that the King can never be nonsuit; for a nonsuit is the desertion of the suit or action by the non-appearance of the plaintiff in Court; although this rule might sometimes work unjustly, the Attorney-General may enter a "non vult prosequi," which has the effect of a nonsuit. In the forms of legal proceedings also the King is not said to appear by his attorney, as other men do; for in contemplation of law he is always present in Court.

**Issuing  
proclamations.**

From the same original, of the King's being the fountain of justice, we may also deduce the prerogative of issuing proclamations, which is vested in the King alone. These proclamations have then a binding force, when (as Sir Edward Coke observes) they are grounded upon and enforce the laws of the realm. For, though the making of laws is entirely the work of a distinct part, the legislative branch of the sovereign power, yet the manner, time, and circumstances of putting those laws in execution must frequently be left to the discretion of the executive magistrate. And therefore his constitutions or edicts concerning these points, which we call proclamations, are binding upon the subject, where they do not either contradict the old laws or tend to establish new ones; but only enforce the execution of such laws as are already in being, in such manner as the King shall judge necessary. Thus the established law is, that the King may prohibit any of his subjects from leaving the realm: a proclamation therefore forbidding this in general for three weeks, by laying an embargo upon all shipping in time of war, will be equally binding as an Act of Parliament, because founded upon a prior law.

IV. The King is likewise the fountain of honour, <sup>Fountain of honour.</sup> of office, and of privilege: and this in a different sense from that wherein he is styled the fountain of justice: for here he is really the parent of them. It is impossible that government can be maintained without a due subordination of rank; that the people may know and distinguish such as are set over them, in order to yield them their due respect and obedience; and also that the officers themselves, being encouraged by emu'ation and the hopes of superiority, may the better discharge their functions: and the law supposes that no one can be so good a judge of their several merits and services as the King himself who employs them. It has therefore intrusted him with the sole power of conferring dignities and honours, in confidence that he will bestow them upon none but such as deserve them. And therefore all degrees of nobility, of knighthood and other titles, are received by immediate grant from the Crown; either expressed in writing, by writs, or letters patent, as in the creation of peers and baronets; or by corporeal investiture, as in the creation of a simple knight.

From the same principle also arises the prerogative <sup>Erection and disposal of offices.</sup> of erecting and disposing of offices: for honours and offices are in their nature convertible and synonymous. All offices under the Crown carry in the eye of the law an honour along with them; because they imply a superiority of parts and abilities, being supposed to be always filled with those that are most able to execute them. And, on the other hand, all honours in their original had duties or offices annexed to them; an earl, comes, was the conservator or governor of a county; and a knight, miles, was bound to attend the King in his wars. For the same reason therefore that honours are in the disposal of the King, offices ought to be so likewise; and as the King may create new titles, so may he create new offices: but with this restriction, that he cannot create new offices with new fees annexed to them, nor annex new fees to old offices; for this would be a tax upon the subject, which cannot be imposed but by Act of Parliament.



Privileges.

Upon the same or a like reason, the King has also the prerogative of conferring privileges upon private persons. Such as granting place or precedence to any of his subjects as shall seem good to his royal wisdom: and according to the regulations of the statute passed respecting it: or such as converting aliens, or persons born out of the King's dominions, into denizens; whereby some very considerable privileges of natural-born subjects are conferred upon them. Such also is the prerogative of erecting corporations; whereby a number of private persons are united and knit together, and may enjoy many liberties, powers, and immunities in their politic capacity which they were utterly incapable of in their natural. Of aliens, denizens, natural-born, and naturalized subjects, I shall speak more largely in a subsequent place, as also of corporations. I now only mention them incidentally, in order to remark the King's prerogative of making them; which is grounded upon this foundation, that the King, having the sole administration of the government in his hands, is the best and the only judge in what capacities, with what privileges, and under what distinctions, his people are the best qualified to serve and to act under him.

Arbiter of commerce.

V. Another light in which the laws of England consider the King with regard to domestic concerns, is as the arbiter of commerce. By commerce, I at present mean domestic commerce only. It would lead me into too large a field if I were to attempt to enter upon the nature of foreign trade, its privileges, regulations, and restrictions; and would be also quite beside the purpose of this work, inasmuch as no municipal laws can be sufficient to order and determine the very extensive and complicated affairs of traffic and merchandise; neither can they have a proper authority for this purpose. For, as these are transactions carried on between subjects of independent states, the municipal laws of one will not be regarded by the other. For which reason the affairs of commerce are regulated by a law of their own, called the law merchant, or "*lex mercatoria*," which all nations agree in and take notice of. And in particular it is held to be part of the law of England, which decides

Law merchant.



the causes of merchants by the general rules which obtain in all commercial countries; and that often even in matters relating to domestic trade, as for instance with regard to the drawing, the acceptance, and the transfer of inland bills of exchange.

In England, the King's prerogative, so far as it relates to mere domestic commerce, will fall principally under the following articles: Domestic commerce

First, the establishment of public marts, or places of buying and selling, such as markets and fairs, with the tolls thereunto belonging. Markets.

Secondly, the regulation of weights and measures. Weights and Measures. These, for the advantage of the public, ought to be universally the same throughout the kingdom; being the general criterions which reduce all things to the same or an equivalent value. But, as weights and measures are things in their nature arbitrary and uncertain, it is therefore expedient that they be reduced to some fixed rule or standard: which standard it is impossible to fix by any written law or oral proclamation: for no man can, by words only, give another an adequate idea of a foot-rule, or a pound-weight. It is therefore necessary to have recourse to some visible, palpable, material standard; by forming a comparison with which, all weights and measures may be reduced to one uniform size: and the prerogative of fixing this standard our ancient law vested in the Crown.

Thirdly, as money is the medium of commerce, it is the King's prerogative, as the arbiter of domestic commerce, to give it authority or make it current. Money. Money is an universal medium or common standard, by comparison with which the value of all merchandise may be ascertained: or it is a sign, which represents the respective values of all commodities.

The coining of money is in all states the act of the sovereign power, for the reason just mentioned, that its value may be known on inspection. And with respect to coinage in general, there are three things to be considered therein: the materials, the impression, and the

denomination, and the settlement of these matters is properly made an article of the prerogative of the sovereign.

Prerogative in Canada.

Having thus considered the law of England regarding the King's prerogative, it is now necessary to examine how far that prerogative exists in Canada. We have seen that under the British North America Act the Parliament of Canada consists of the King, the Senate and the House of Commons. By the same Act the Executive Government and authority of and over Canada is declared to continue and be vested in the Queen. The provisions of the Act referring to Her Majesty extend to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland. The attributes of sovereignty, perfection and perpetuity are appropriately assigned to the King in Canada as well as in England. The powers mentioned as belonging to him in foreign affairs would be exercised by him in Canada as in England on the advice of his responsible Ministers should he be personally present in Canada. As the King remains in England, foreign negotiations affecting all parts of the Empire are directed in England only. In late years where questions affecting Canada are brought under discussion it has become customary to invite the Canadian Ministry to send a delegate to specially guard Canadian interests. The theoretical power remains of disposing of these interests without consulting Canadian opinion. Good sense has shown that in local matters local knowledge must be consulted. On the other hand, it is reasonably expected that Imperial interests must not be sacrificed to local necessities. On these lines all treaties with foreign powers have latterly been negotiated. So long as Canada remains a part of the British Empire she must expect that her liability to peace or war will depend on the decision of statesmen in England. If the King of England, on the advice of his Ministers, declares war or proclaims peace, Canadians, being British subjects, take the same consequences as other British subjects. The King is the representa-

In foreign affairs.

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tive of Canada in international questions as he is of England.\*

As to domestic matters, the King has delegated his position to the Governor-General for the Dominion. He in turn, by virtue of that delegated authority in terms of the British North America Act, appoints the Lieutenant-Governor.

The first domestic power mentioned, that of rejecting bills, is specially provided for as follows :

Where a bill presented by the House of Parliament is presented to the Governor-General for the King's assent, he declares according to his discretion, but subject to the provisions of the British North America Act and to His Majesty's instructions, either that he assents to the bill in the King's name, or that he withholds the King's assent, or that he reserves the bill for the signification of the King's pleasure. When he assents to a bill in the King's name he sends a copy of the Act to one of His Majesty's principal Secretaries of State; if the King in council within two years after the receipt of the Act by the Secretary of State thinks fit to disallow it, the disallowance, with a certificate of the Secretary of State of the day on which the Act was received by him, is signified by the Governor in council by speech or message to each of the Houses of Parliament or by proclamation. The effect of the disallowance is that the Act is annulled from and after the day of the signification by the Governor-General of the disallowance. A bill reserved for the signification of the King's pleasure has no force, unless and until, within two years from the day on which it was presented to the Governor-General for the King's assent, the Governor-General signifies that it has received the assent of the King in council; this signifi-

In domestic matters.

Rejection of bills.

B. N. A. Act s. 56.

B. N. A. Act's. 57.

\* In order to watch the interests of Canada in England, an officer called the High Commissioner for Canada is appointed. His main duty is to carry out the instructions he receives from the Governor in Council respecting the commercial, financial and general interests of Canada in the United Kingdom and elsewhere. He acts as agent for the Dominion with the Imperial Government, and is especially directed to supervise immigration. Being resident in London, he is able with more force to lay the views of the Canadian Government and people before the Imperial authorities should any cause of difference arise.

R. S. C. c. 16.

tion the Governor-General may make by speech or message to each of the Houses of Parliament, or by proclamation. An entry of the signification is made in the journal of each House and a duplicate delivered to the proper officer to be kept in the proper records of Canada.

Rejection  
of bills in  
provincial  
matters.

B. N. A.  
Act, s. 100.

With regard to provincial legislation, the provisions of the British North America Act, just referred to, apply to all Provincial Legislatures with the substitution of the Lieutenant-Governor for the Governor-General, of the Governor-General for the Queen and a Secretary of State, of one year for two years, and of the province for Canada. The power of veto thus given by the British North America Act to the Governor-General and to the Lieutenant-Governor is one of the questions still remaining unsettled under our constitution. It has been officially declared that the power can only be exercised according to the advice of the Privy Council for Dominion Acts, and of the Executive Council for Provincial Acts; it is one of those delicate theoretical questions which in practice may develop serious difficulties. There is no doubt that the intention of the constitution is that the King and his representatives shall have an individual power of vetoing, to be used according to their discretion for the general good. The British North America Act nowhere limits the theoretical right to veto. The reasonable consideration is that the power is given as a check on the other branches of the legislative power. If the right were arbitrarily or unreasonably exercised, a case for which the constitution does not provide, a remedy would be found by a stoppage of supplies; it is not easy to contemplate the possibility of such an event. If the right were enforced to its undoubtedly strict theoretical extent, it might lead to revolution. These considerations have weighed to such an extent hitherto, that practically it may be said the veto is only used under the advice of the Ministry for the time being.

Military  
command.

As to the second domestic power vested in the King—that of military command. We have mentioned that the command-in-chief of the militia and naval and military forces of and in Canada is vested in him. Of the

manner of raising and regulating the militia we shall see more further on.

Beacons, buoys, lighthouses and Sable Island are specially transferred to the Dominion by item 9 of section 91 of the British North America Act. With regard to ports and harbours, and other similar matters, section 108 of the British North America Act provides that the public works and property mentioned in the third schedule shall be the property of Canada. The items mentioned in the schedule are as follows:

1. Canals, with lands and water power connected therewith.
2. Public harbours.
3. Lighthouses and piers and Sable Island.
4. Steamboats, dredges and public vessels.
5. Rivers and lake improvements.
6. Railways and railway stocks, mortgages and other debts due by railway companies.
7. Military roads.
8. Custom houses, post offices and all other public buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as ordnance property.
11. Armouries, drill sheds, military clothing and munitions of war, and lands set apart for general public purposes.

By virtue of this transfer jurisdiction over all these matters is exercised by the Parliament of Canada. To that extent the Crown may be said to have divested itself of that branch of its prerogative.

As to the right of confining the subject within the realm the prerogative is divided. In civil suits the matter is one for the provinces to deal with under number 13 of section 92. By that clause "Property and Civil Rights" being transferred to the province, this right would seem to have been transferred also. The general

Confining  
the subject  
within the  
realm.

right of forbidding departure or ordering a return of a subject is still apparently in the King.

Appoint-  
ment of  
Judges.

B. N. A.  
Act, secs.  
96, 99, 100.

The appointment of Judges is vested in the Governor-General. They hold office during good behaviour, but are removable by the Governor-General on address of the Senate and House of Commons. Their salaries, allowances and pensions are fixed and provided for by the Parliament of Canada. That the King is the fountain of justice is true of Canada as well as of England, but in this particular, as in others, the King acts by deputy.

Fountain  
of honour.

That the King is the fountain of honour is also true of Canada. His right of conferring privileges upon private persons has been greatly reduced by his own concurrence. For instance, by number 25 of section 91 of the British North America Act the right of legislating

Privileges.

over naturalization and aliens is transferred to the Dominion Parliament. The right of erecting corporations with provincial objects is by section 92, number 11, assigned to the provinces. Other corporations are not mentioned in the British North America Act, but if the power of creating them does not reside with the Governor-General as a matter of prerogative, it belongs to the Dominion Parliament.

Corpora-  
tions.

Trade and  
commerce.

The regulation of trade and commerce is by number 2 of section 91 of the British North America Act assigned to the Dominion Parliament. The matters specially mentioned above as belonging to the King's prerogative under this heading are public marts, weights and measures and currency. No provision is made in the British North America Act for the regulating of public marts. Under some aspects this matter may be one of trade and commerce, and so under the jurisdiction of the Dominion. Under other aspects it may be a matter of municipal institution under number 8 of section 92, or a question of property and civil rights under number 13 of section 92. In either event it seems no longer to be a matter of prerogative.

Markets.

Weights  
and  
measures.

The regulation of weights and measures is by number 17 of section 91 specially assigned to the Dominion Parliament.

The currency and coinage and legal tender are by <sup>Currency.</sup> numbers 14 and 20 of section 91 also specially assigned to the Dominion Parliament. Legislation on these matters has been assented to by the Crown. The rules which have been laid down by this legislation are as follows: The denominations of the currency <sup>R. S. C. c. 30.</sup> of Canada are dollars, cents and mills—the cent being the one-hundreth part of a dollar, and the mill one-tenth part of a cent. The British sovereign is equal to and passes current for four dollars and eighty-six and two-thirds of a cent of the currency of Canada, and the half-sovereign for half as much. All public accounts must be kept in the currency of Canada. All private accounts are to be taken as to have been made with reference to that currency, unless the contrary be stated. No Dominion notes or bank notes can be made payable in any other currency in Canada. As to legal tender, gold coins struck in Canada of the standard of fineness prescribed by law for the gold coins of the United Kingdom, and bearing the same proportion in weight to that of the British sovereign as five dollars bear to four dollars and eighty-six and two-thirds of a cent are legal tender for five dollars. Any multiples or divisions of these coins pass for their respective value. Silver, copper and bronze coins struck for the provinces of Ontario, Quebec and New Brunswick are current and a legal tender throughout Canada. Any silver, copper or bronze coins struck for circulation in Canada are to be <sup>Legal Tender.</sup> current and a legal tender in Canada—the silver to the amount of ten dollars, the copper or bronze to the amount of twenty-five cents in any one payment. The holder of the notes of any person to the amount of more than ten dollars, is not to be bound to receive more than that amount in silver coins in payment of these notes if presented for payment at one time, although any of the notes is for a less sum. Defaced coin is not a legal tender. Provision has been made for the proclamation of the rates at which foreign coins may be legal tender. Special allowance is made for the American gold eagles.



struck between 1st July, 1834, and 1st January, 1852, and after that date if weighing ten pennyweights, eighteen grains Troy weight, and of the standard of fineness established in the last mentioned day. These coins pass for ten dollars. Half and quarter eagles and other gold multiples and divisions pass for their respective values under the same conditions.

It is desirable to note that in this Act of the Dominion the privilege of coining is reserved to the King. The Dominion Parliament has assumed only to fix the value of the coins as legal tender. •

King's revenue in England.

Having, in the preceding pages, considered at large those branches of the King's prerogative which contribute to his royal dignity and constitute the executive power of the Government, we proceed now to examine the King's fiscal prerogatives, or such as regard his revenue; which the British constitution has vested in the royal person, in order to support his dignity and maintain his power; being a portion which each subject contributes of his property in order to secure the remainder. We will follow the same order of consideration as we have observed in discussing the subject of prerogative. The King's revenue in England will first be examined, and then in succession his revenue in Canada and in the province.

Ordinary revenue.

This revenue is either ordinary or extraordinary. The King's ordinary revenue is such as has either subsisted time out of mind in the Crown; or else has been granted by Parliament, by way of purchase or exchange, for such of the King's inherent hereditary revenues as were found inconvenient to the subject.

When I say that it has subsisted time out of mind in the Crown, I do not mean that the King is at present in the actual possession of the whole of his revenue. Much (nay, the greatest part) of it is at this day in the hands of subjects; to whom it has been granted out from time to time by the Kings of England: which has rendered the Crown in some measure dependent on the people for its ordinary support and subsistence.

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The sources of the King's ordinary revenue enumerated by Blackstone are 18 in number. In Canada the revenue from all sources, as we shall see, is placed in one fund, and no person troubles himself at present to investigate the origin of any particular tax or claim. But it is necessary for us to know by what authority the tax is imposed, in the first instance; and, besides, questions have arisen between the Dominion and the provinces as to which of them is entitled to certain revenues. Whether the revenue in question belongs to the Dominion or province, in any case the particular revenue can only be adjudged to the successful claimant on the ground that that claimant is the representative of the King, and has succeeded to his rights. Hence it may become necessary to know what those rights were. I propose only to mention those incidents of revenue which can have no application to Ontario, and, after briefly explaining the nature of the remaining items, pass on to our legislation.

Of the eighteen items enumerated, the following <sup>ordinary</sup> can be here disregarded: <sub>revenue</sub>

1. Custody of the temporalities of bishops.
2. Corodies.
3. Extra parochial tithes.
4. First fruits and tenths of spiritual preferment.
5. Rents and profits of the demesne lands of the Crown. These demesne lands were either the share reserved to the Crown at the original distribution of landed property, or such as came to it afterwards by forfeitures or other means. There can be no demesne lands of the King in Ontario, because all such revenues were surrendered by the Crown for the benefit of the old Province of Canada, and by section 109 of the British North America Act were continued as the property of Ontario and Quebec respectively.
6. Profits of the military tenures. These tenures were abolished in 1661.
7. Wine licenses, rents payable to the Crown by persons licensed to sell wine. This revenue was abolished in 1755 (30 Geo. II.).

8. Profits arising from the King's forests. Forests are waste grounds belonging to the King, replenished with all manner of beasts or venery; which are under the King's protection for the sake of his royal recreation and delight. There are no forests in this sense in Ontario.

9. Profits arising from the King's ordinary Courts of justice. These consist not only in fines imposed upon offenders, forfeitures of recognizances and amercements levied upon defaulters, but also in certain fees due to the Crown in a variety of legal matters; as, for setting the Great Seal to charters, original writs, and other forensic proceedings, and for permitting fines to be levied of lands in order to bar entails, or otherwise to ensure their title. We shall see that in Canada these and similar items are now part of the general revenue of the Dominion and province respectively.

Royal fish.

10. The right to royal fish, which are whale and sturgeon. These, when either thrown on shore or caught near the coast, are the property of the King on account of their superior excellence. The assertion of this right is not likely to be called for in the province, except upon its northern boundary, the shores of Hudson's Bay.

Shipwrecks.

17 Edw.  
II. c. 11.

11. Shipwrecks. These are declared to be the King's property by the prerogative statute 17 Edw. II. c. 11, and were so, long before, at the common law. Wreck by the ancient common law was where any ship was lost at sea and the goods or cargo were thrown upon the land; in which case these goods so wrecked were adjudged to belong to the King: for, it was held that, by the loss of the ship, all property was gone out of the original owner. The rigour of this law was gradually softened in favour of the distressed proprietors.

Jetsam,  
flotsam  
and ligan.

It is to be observed, that, in order to constitute a legal wreck, the goods must come to land. If they continue at sea, the law distinguishes them by the barbarous and uncouth appellations of jetsam, flotsam and ligan. Jetsam is where goods are cast into the sea, and there sink and remain under water; flotsam is where

they continue swimming on the surface of the waves; ligan is where they are sunk in the sea, but tied to a cork or buoy, in order to be found again. These are also the King's if no owner appears to claim them; but, if any owner appears, he is entitled to recover the possession. For even if they be cast overboard, without any mark or buoy, in order to lighten the ship, the owner is not by this act of necessity construed to have renounced his property: much less can things ligan be supposed to be abandoned, since the owner has done all in his power to assert and retain his property. These three are therefore accounted so far a distinct thing from the former, that by the King's grant to a man of wrecks, things jetsam, flotsam and ligan will not pass.

Wrecks, in their legal acceptance, are at present not very frequent; for, if any goods come to land, it rarely happens, since the improvement of commerce, navigation and correspondence, that the owner is not able to assert his property within the year and day limited by law. And in order to preserve this property entire for him, and, if possible, to prevent wrecks at all, our laws have made many humane regulations. For by the statute 27 Edw. III. c. 13, if any ship be lost on the shore, and the goods come to land (which cannot, says the statute, be called wreck), they shall be presently delivered to the merchants, paying only a reasonable reward to those that saved and preserved them, which is entitled salvage. Also, by the common law, if any persons (other than the sheriff) take any goods so cast on shore, which are not legal wreck, the owners might have a commission to inquire and find them out, and compel them to make restitution.

In Canada the Dominion Parliament has passed a law respecting wrecks and casualties to ships and salvage, the main provisions of which we will reach later on.

12. The right to mines has its original from the King's prerogative of coinage in order to supply him with materials. Therefore those mines which are properly royal, and to which the King is entitled when

found, are only those of silver and gold. By the old common law, if gold or silver be found in mines of base metal, according to the opinion of some the whole was a royal mine, and belonged to the King; though others held that it only did so if the quantity of gold or silver was of greater value than the quantity of base metal. This distinction was made in England by statute immaterial. In Ontario the mining laws will be considered in discussing the property of the province.

Treasure  
Trove.

13. To the same original may in part be referred the revenue of treasure trove (derived from the French word "trouver," to find), called in Latin "thesaurus inventus," which is where any money or coin, gold, silver, plate, or bullion is found hidden in the earth, or other private place, the owner thereof being unknown; in which case the treasure belongs to the King: but if he that hid it be known, or afterwards found out, the owner and not the King is entitled to it. Also if it be found in the sea, or upon the earth, it does not belong to the King, but the finder, if no owner appears. So that it seems it is the hiding, and not the abandoning of it, that gives the King a property. This difference clearly arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place evidently does not mean to relinquish his property, but reserves a right of claiming it again when he sees occasion; and, if he dies and the secret also dies with him, the law gives it the King, in part of his royal revenue. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant or finder, unless the owner appear and assert his right, which then proves that the loss was by accident, and not with an intent to renounce his property.

Formerly all treasure trove belonged to the finder; as was also the rule of the civil law. Afterwards it was judged expedient for the purposes of the state, and particularly for the coinage, to allow part of what was so

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found to the King, which part was assigned to be all hidden treasure; such as is casually lost and unclaimed, and also such as is designedly abandoned, still remain the right of the fortunate finder.

14. Waifs, "*bona waviata*," are goods stolen, and Waifs. waived or thrown away by the thief in his flight, for fear of being apprehended. These are given to the King by the law as a punishment upon the owner for not himself pursuing the felon, and taking away his goods from him. And therefore if the party robbed do his diligence immediately to follow and apprehend the thief (which is called making fresh suit), or do convict him afterwards, or procure evidence to convict him, he shall have his goods again. Waived goods do also not belong to the King till seized by somebody for his use; for if the party robbed can seize them first, though at the distance of twenty yards, the King shall never have them. If the goods are hid by the thief, or left anywhere by him, so that he had them not about him when he fled, and therefore did not throw them away in his flight; these also are not "*bona waviata*," but the owner may have them again when he pleases. The goods of a foreign merchant, though stolen and thrown away in flight, shall never be waifs; the reason whereof may be, not only for the encouragement of trade, but also because there is no wilful default in the foreign merchant's not pursuing the thief; he being generally a stranger to our laws, our usages, and our language.

15. Estrays are such valuable animals as are Estrays. found wandering in any manor or lordship, and no man knoweth the owner of them; in which case the law gives them to the King as the general owner and lord paramount of the soil, in recompense for the damage which they may have done therein; and they now most commonly belong to the lord of the manor by special grant from the Crown. But, in order to vest an absolute property in the King or his grantees, they must be proclaimed in the church and two market towns next adjoining to the place where they are found; and then, if no man claims them, after proclamation, and a year and a day passed, they belong to the King or his substitute

without redemption, even though the owner were a minor or under any other legal incapacity. Any beasts might be estrays that are by nature tame or reclaimable, and in which there is a valuable property, as sheep, oxen, swine and horses, which we in general call cattle. For animals upon which the law sets no value, as a dog or cat, and animals *feræ naturæ*, as a bear or wolf, cannot be considered as estrays. So swans may be estrays, but not any other fowl; whence they are said to be royal fowl. The reason of which distinction seems to be, that cattle and swans being of a reclaimed nature, the owner's property in them is not lost merely by their temporary escape; and they also, from their intrinsic value, are a sufficient pledge for the expense of the lord of the franchise in keeping them the year and day. For he that takes an estray is bound, so long as he keeps it, to find it in provisions and preserve it from damage, and may not use it by way of labour, but is liable to an action for so doing. Yet he may milk a cow, or the like; for that tends to the preservation, and is for the benefit of the animal.

Besides the particular reasons before given why the King should have the several revenues of royal fish, shipwrecks, treasure trove, waifs and estrays, there is also one general reason which holds good for them all, and that is, because they are *bona vacantia*, or goods in which no one else can claim a property, and, therefore, by the law of nature, they belonged to the first occupant or finder.

For-  
feitures.

16. The next branch of the King's ordinary revenue consists in forfeitures of lands and goods for offences, or, as the lawyers term them, "*forisfacta*"; that is, such whereof the property is gone away or departed from the owner. The true reason and only substantial ground of any forfeiture for crimes consists in this: that all property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom which every man must sacrifice when he enters into social communities. If, therefore, a member of any national community violates the fundamental contract of his association, by



transgressing the municipal law, he forfeits his right to such privileges as he claims by that contract; and the state may very justly resume that portion of property, or any part of it, which the laws have before assigned him. Hence, in every offence of an atrocious kind, the laws of England have exacted a total confiscation of the movables or personal estate; and in many cases a perpetual, in others only a temporary, loss of the offender's immovables or landed property; and have vested them both in the King, who is the person supposed to be offended, being the one visible magistrate in whom the majesty of the public resides. The particulars of these forfeitures it is not necessary to consider. I therefore only mention them here for the sake of regularity, as a part of the census regalis.

17. Another branch of the King's ordinary revenue Escheats. arises from escheats of lands, which happen upon the defect of heirs to succeed to the inheritance; whereupon they in general revert to and invest in the King, who is esteemed, in the eye of the law, the original proprietor of all the lands in the kingdom. But the discussion of this topic more properly belongs to the rights of things than the rights of persons.

18. I proceed, therefore, to the eighteenth and last branch of the King's ordinary revenue; which consists in the custody of idiots, from whence we shall be naturally led to consider also the custody of lunatics.

An idiot, or natural fool, is one that has had no un- Idiot.derstanding from his nativity, and therefore is by law presumed never likely to attain any. For which reason the custody of him and of his lands was formerly vested in the lord of the fee; but, by reason of the manifold abuses of this power by subjects, it was at last provided by common consent that it should be given to the King, as the general conservator of his people, in order to prevent the idiot from wasting his estate and reducing himself and his heirs to poverty and distress. This final prerogative of the King is declared in Parliament by statute 17 Edw. II. c. 9, which directs (in affirmation of the common law) that the King shall have ward

17 Edw.  
II. c. 9.

of the lands of natural fools, which has been construed to mean also the goods and chattels, taking the profits without waste or destruction, and shall find them necessities; and after the death of such idiots he shall render the estate to the heirs, in order to prevent such idiots from aliening their lands, and their heirs from being disinherited.

A man is not an idiot if he has any glimmering of reason, so that he can tell his parents, his age, or the like common matters. But a man who is born deaf, dumb and blind is looked upon by the law as in the same state with an idiot; he being supposed incapable of any understanding, as wanting all those senses which furnish the human mind with ideas.

Lunatic.

A lunatic, or non compos mentis, is one who has had understanding, but by disease, grief, or other accident, has lost the use of his reason. A lunatic is indeed properly one that has lucid intervals; sometimes enjoying his senses and sometimes not, and that frequently, in the opinion of some, depending upon the change of the moon. But under the general name of non compos mentis (which, Sir Edward Coke says, is the most legal name), are comprised not only lunatics, but persons under frenzies, or who lose their intellects by disease; those that grow deaf, dumb and blind, not being born so; or such, in short, as are judged, as well at law as in equity, incapable of conducting their own affairs. To these also, as well as idiots, the King is guardian, but to a very different purpose. For the law always imagines that these accidental misfortunes may be removed, and therefore only constitutes the Crown a trustee for the unfortunate persons, to protect their property, and to account to them for all profits received if they recover, or after their decease to their representative. And, therefore, it is declared by the statute 17 Edw. II. c. 10, that the King shall provide for the custody and sustentation of lunatics, and preserve their lands and the profits of them for their use, when they come to their right mind; and the King shall take nothing to his own use: and if the parties die in such estate, the residue shall

17 Edw.  
II. c. 10.

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be distributed for their souls, by the advice of the ordinary, and of course (by the subsequent amendments of the law of administration) shall now go to their executors or administrators.

On the first attack of lunacy, or other occasional insanity, while there may be hopes of a speedy restitution of reason, it is usual to confine the unhappy objects in private custody, under the direction of their nearest friends and relations; and the Legislature, to prevent all abuses incident to such private custody, has thought proper to interpose its authority, and many statutes have been passed for regulating private mad-houses.

As to the mode of dealing in Ontario with the custody of the person and estate of lunatics, we will consider this matter when we treat of the practice of the Courts.

This may suffice for a short view of the King's ordinary revenue, or the proper patrimony of the Crown, which was very large formerly, and capable of being increased to a magnitude truly formidable; for there are very few estates in the kingdom that have not, at some period or other since the Norman Conquest, been vested in the hands of the King by forfeiture, escheat, or otherwise. But, fortunately for the liberty of the subject, this hereditary landed revenue, by a series of improvident management, is sunk almost to nothing, and the casual profits arising from the other branches of the census regalis are likewise almost all of them alienated from the Crown. In order to supply the deficiencies of which we are now obliged to have recourse to new methods of raising money, unknown to our early ancestors; which methods constitute the King's extraordinary revenue.

The items of extraordinary revenue enumerated by Blackstone were: 1. The land tax. 2. Malt tax. Both of these were said to be annual taxes. The perpetual taxes were: 1. The customs. 2. The excise. 3. Duty upon salt. 4. Post-office. 5. Stamp duties. 6. Duty upon houses and windows. 7. Tax upon servants. 8. Duty arising from licenses on hackney coaches. 9.

Extraordinary  
Revenue.

Duty upon offices and pensions. Much of what he says is entirely of local application. A review of our Canadian system of taxation would seem to lead us into the domain of politics, but a statement of the origin of some of these taxes is useful. It is not enough to know that they must be paid. The principle on which they are levied should also be understood.

**Land Tax.** I. The land tax superseded all former methods of rating either property or persons in respect of their property. Any discussion of the nature or propriety of this tax belongs to the subject of political economy, and must be dismissed here with only a mention of the name of the tax.

**Malt Tax.** II. The other annual tax was the malt tax, which was a sum raised every year by Parliament, ever since 1697, by a duty of 6d. in the bushel on malt, and a proportionable sum on certain liquors, such as cider and perry, which might otherwise prevent the consumption of malt.

**Customs.** Among the perpetual taxes which require more detailed notice are:

I. The customs; or the duties, toll, tribute, or tariff, payable upon merchandise exported and imported. The considerations upon which this revenue (or the more ancient part of it, which arose only from exports) was invested in the King were said to be two: 1. Because he gave the subject leave to depart the kingdom, and to carry his goods along with him. 2. Because the King was bound of common right to maintain and keep up the ports and havens, and to protect the merchants from pirates. Some have imagined they were called with us customs because they were the inheritance of the King by immemorial usage and the common law, and not granted him by the statute; but Sir Edward Coke has clearly shown that the King's first claim to them was by grant of Parliament, 3 Edw. I., though the record thereof is not now extant. And indeed this is in express words confessed by statute 25 Edw. I. c. 7, wherein the King promises to take no customs from merchants without the common assent of the realm, "saving to us and our heirs the customs on wools, skins and

3 Edw. I.

25 Edw. I.  
c. 7.

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leather, formerly granted to us by the commonalty aforesaid." These were formerly called the hereditary customs of the Crown, and were due on the exportation only of the said three commodities, and of none other; which were styled the staple commodities of the kingdom, because they were obliged to be brought to those ports where the King's staple was established, in order to be there first rated and then exported. They were denominated, in the barbarous Latin of our ancient records, "custuma," not "consuetudines," which is the language of our law whenever it means merely usages. The duties on wool, sheepskins, or wool-fells, and leather exported, were called "custuma antiqua sive magna," and were payable by every merchant, as well native as stranger; with this difference, that merchant-strangers paid an additional toll, viz., half as much again as was paid by natives. The "custuma parva et nova" were an impost of 3d. in the pound, due from merchant-strangers only, for all commodities, as well imported as exported; which was usually called the alien's duty, and was first granted in 31 Edw. I. But these ancient hereditary customs, especially those on wool and wool-fells, came to be of little account, when the nation became sensible of the advantages of a home manufacture, and prohibited the exportation of wool by statute 11 Edw. III. c. 1.

31 Edw. I.

11 Edw.  
III. c. 1.

There is also another very ancient hereditary duty belonging to the Crown, called the prisage or butlerage of wines; which is considerably older than the customs, being taken notice of in the great roll of the exchequer, 8 Rich. I., still extant. Prisage was a right of taking two 8 Rich. I. tuns of wine from every ship (English or foreign) importing into England twenty tuns or more; one before and one behind the mast, which by charter of Edw. I. was exchanged into a duty of 2s. for every tun imported by merchant-strangers, and called butlerage, because paid to the King's butler.

Butlerage.

Other customs payable upon exports and imports were distinguished into subsidies, tonnage, poundage, and other imposts. Subsidies were such as were imposed by Parliament upon any of the staple commodities before mentioned, over and above the "custuma antiqua

Subsidies.

**Tonnage.** et magna:" tonnage was a duty upon all wines imported over and above the prisage and butlerage aforesaid :  
**Poun a** poundage was a duty imposed ad valorem, at the rate of 12d. in the pound, on all other merchandise whatsoever; and the other imposts were such as were occasionally laid on by Parliament, as circumstances and times required. These distinctions are now in a manner forgotten, except by the officers immediately concerned in this department; their produce being in effect all blended together, under the one denomination of the customs.

**Customs.** By these we understand, at present, a duty or subsidy, paid by the merchant, at the quay, upon all commodities imported as well as exported, or carried coastwise, by authority of Parliament; unless where, for particular national reasons, certain rewards, bounties, or drawbacks are allowed for particular exports or imports. Those of tonnage and poundage, in particular, were at first granted, as the old statutes (and particularly 1 Eliz. c. 19) express it, for the defence of the realm, and the keeping and safeguard of the seas, and for the intercourse of merchandise safely to come into and pass out of the same. They were at first usually granted only for a stated term of years, as, for two years in 5 Rich. II.; but in Henry the Sixth's time they were granted him for life by a statute in the thirty-first year of his reign: and again to Edward IV. for the term of his life also; since which time they were regularly granted to all his successors for life, sometimes at the first, sometimes at other subsequent Parliaments, till the reign of Charles the First, whose Ministers were not sufficiently solicitous for a renewal of this legal grant. And yet these imposts were imprudently and unconstitutionally levied and taken, without consent of Parliament, for fifteen years together; which was one of the causes of the rebellion against that King. Upon the Restoration this duty was granted to King Charles the Second for life, and so it was to his immediate successors; but by three several statutes, 9 Ann. c. 6, 1 Geo. I. c. 12, and 3 Geo. I. c. 7, it is made perpetual and mortgaged for the debt of the public. The customs thus imposed by

1 Eliz.  
c. 19.

Parliament were chiefly contained in two books of rates, set forth by parliamentary authority; one signed by Sir Harbottle Grimston, Speaker of the House of Commons in Charles the Second's time; and the other an additional one signed by Sir Spencer Compton, Speaker in the reign of George the First; to which also subsequent additions have been made. But one of the most useful efforts of modern legislation has been the consolidation of all the Acts and regulations relating to the customs. The customs laws of the Dominion will be presently stated when we arrive at Canadian legislation on this subject.

Aliens formerly paid a larger proportion than <sup>Aliens' duty.</sup> natural subjects, which was what was generally understood by the aliens' duty; to be exempted from which was one principal cause of the frequent applications to Parliaments for Acts of naturalization.

IV. Directly opposite in its nature to the customs <sup>Excise.</sup> duty is the excise duty; which is an inland imposition, paid sometimes upon the consumption of the commodity; or frequently upon the retail sale, which is the last stage before the consumption. This is doubtless, impartially speaking, the most economical way of taxing the subject: the charges of levying, collecting, and managing the excise duties being considerably less in proportion than in other branches of the revenue. It also renders the commodity cheaper to the consumer than charging it with customs to the same amount would do; for the reason just now given, because generally paid in a much later stage of it. The excise duty is also a great check to the adulteration of the articles on which it is levied. But at the same time the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation. For the frauds that might be committed in this branch of the revenue, unless a strict watch is kept, make it necessary, wherever it is established, to give the officers a power of entering and searching the houses of such as deal in excisable commodities at any hour of the day, and in many cases of the night likewise. And the proceedings in case of trans-



gressions are so summary and sudden that a man may be convicted in two days' time in the penalty of many thousand pounds by three commissioners or two justices of the peace; to the total exclusion of the trial by jury and disregard of the common law.

The excise duty was first established in 1643, and its process was gradual; being at first laid upon those persons and commodities where it was supposed the hardship would be least perceivable, viz., the makers and vendors of beef, ale, cider, and perry, and the royalists at Oxford soon followed the example of their brethren at Westminster by imposing a similar duty; both sides protesting that it should be continued no longer than to the end of the war, and then be utterly abolished. But the Parliament at Westminster soon after imposed it on flesh, wine, tobacco, sugar, and such a multitude of other commodities that it might fairly be denominated general. Upon King Charles's return, it having then been long established, and its produce well known, some part of it was given to the Crown, in 12 Car. II., by way of purchase (or rather compensation) for feudal tenures and other oppressive parts of the hereditary revenue. And this is still called an hereditary excise. But, from its first original to the present time, its very name has been odious to the people of England. It has nevertheless been imposed on abundance of other commodities in the reigns of King William III. and every succeeding prince, to support the enormous expenses occasioned by our wars on the continent. Thus brandies and other spirits are now excised at the distillery; printed silks and linens, at the printer's; starch and hair powder, at the maker's; gold and silver wire, at the wire-drawer's; plate, in the hands of the vendor, who pays yearly for a license to sell it; auctioneers, who are charged with an annual duty for their licenses; and coaches and other wheel carriages, for which the occupier is excised, though not with the same circumstances of arbitrary strictness as in most of the other instances. To these we may add coffee and tea, chocolate and cocoa paste, for which the duty is paid by the retailer: all artificial wines, commonly called sweets; paper and paste-

board, first when made, and again if stained or printed: malt, as before mentioned, and now rendered a perpetual tax; vinegars, for all which the duty is paid by the manufacturer; hops, for which the person that gathers them is answerable; candles, which are paid for at the maker's; malt liquors brewed for sale, which are excised at the brewery; cider and perry, at the vendor's; and leather and skins, at the tanner's. "A list, which," in the opinion of Blackstone, "no friend to his country would wish to see farther increased."

3. The next duty mentioned by Blackstone is the salt tax, with which we need not concern ourselves.

4. Another very considerable branch of the revenue Post office. is levied with greater cheerfulness, as, instead of being a burden, it is a manifest advantage to the public. I mean the post office, or duty for the carriage of letters. As we have traced the original of the excise to the Parliament of 1643, so it is but justice to observe that this useful invention owes its first legislative establishment to the same assembly.

In 1657, a regular post office was erected by the authority of the Protector and his Parliament, upon nearly the same model as has been ever since adopted, and with the same rates of postage as continued till the reign of Queen Anne. After the Restoration a similar office, with some improvements, was established by statute 12 Car. II. c. 35, but the rates of letters were altered, and some farther regulations added, by the statutes 9 Anne, c. 10, and many others. The privilege of letters 9 Anne c. 10. coming free of postage, to and from members of Parliament, was claimed by the House of Commons in 1660, when the first legal settlement of the present post office was made; but afterwards dropped upon a private assurance from the Crown that this privilege should be allowed the members. "There cannot be devised," says Blackstone, "a more eligible method than this of raising money upon the subject: for therein both the Government and the people find a mutual benefit. The Government thus acquire a large revenue: and the people do their business with greater ease, expedition and cheapness, than

they would be liable to do if no such tax (and of course no such office) existed."

Our Canadian legislation on the subject of the post office will be dealt with presently.

Stamp  
Duties.

5. A fifth branch of the perpetual revenue consists in the stamp duties, which were, in the time of Blackstone, a tax imposed upon all parchment and paper whereon any legal proceedings or private instruments of almost any nature whatsoever are written; and also upon licenses for retailing wines, letting horses to hire, and for certain other purposes; and upon all almanacks, newspapers, advertisements, cards, dice, and pamphlets containing less than six sheets of paper. These imposts are very various, according to the nature of the thing stamped, rising gradually from a penny to thousands of pounds. The first institution of the stamp duties was by statute 5 & 6 W. & M. c. 21, and they have since in many instances been increased to ten times their original amount.

5 & 6  
W. & M.  
c. 21.

The only stamps we have to do with in Ontario are those on legal proceedings.

The other duties mentioned by Blackstone I will not attempt to enumerate, as we have to pass on as rapidly as possible to our own system of taxation.

The appropriation of these several branches of revenue in England I will not attempt to describe. It does not directly interest us in Ontario, although we receive indirect benefit from much of the expenditure in the protection afforded us by the navy and the diplomatic service. The appropriation of the income of Canada and of the Province of Ontario is specially distributed by statute of each, as we shall see.

The respective products of the several taxes before-mentioned were originally separate and distinct funds; being securities for the sums advanced on each several tax, and for them only. But at last it became necessary, in order to avoid confusion, as they multiplied yearly, to reduce the number of these separate funds by uniting and blending them together; superadding the faith of Parliament for the general security of the whole. So

that there were only three capital funds of any account, the aggregate fund, and the general fund, so called from such union and addition; and the South Sea fund, being the produce of the taxes appropriated to pay the interest of such part of the national debt as was advanced by that company and its annuitants. And by the statute 27 Geo. III. c. 13, these three funds were united together, and form the consolidated fund, and the consolidated funds of England and Ireland were afterwards united by the 56 Geo. III. c. 98. This last fund has become the great national security, and its whole produce, thus aggregated, is liable to pay such interest or annuities as were formerly charged upon each distinct fund; the faith of the legislature being moreover engaged to supply any casual deficiencies.

The customs, excise, and other taxes, which are to support these funds, depending on contingencies, upon exports, imports, and consumptions, must necessarily be of a very uncertain amount; but though some of them have proved unproductive, and others deficient, the sum total has been usually more than was sufficient to answer the charge upon them. The surpluses therefore of the three great national funds, the aggregate, general, and South Sea funds, over and above the interest and annuities charged upon them, in the year 1716 were directed, by statute 3 Geo. I. c. 7, to be carried together, and to attend the disposition of Parliament; and was usually denominated the sinking fund, because originally destined to sink and lower the national debt. To this was added many other entire duties, granted in subsequent years; and the annual interest of the sums borrowed on their respective credits was charged on and payable out of the produce of the sinking fund. However, the net surpluses and savings, after all deductions paid, amounted annually to a very considerable sum. For, as the interest on the national debt has been at several times reduced (by the consent of the proprietors, who had their option either to lower their interests or be paid their principal), the savings from the appropriated revenues came at length to be extremely large. After various experiments for the reduction of the national

10 Geo.  
IV. c. 27.

debt by the Act 10 Geo. IV. c. 27, which came into operation on the 5th of July, 1829, it was enacted, that the sum thenceforth annually applicable to the reduction of the national debt shall be the sum which shall appear to be the amount of the whole actual annual surplus revenue beyond the expenditure of the United Kingdom. This sinking fund is the last resort of the nation; its only domestic resource, on which must chiefly depend all the hopes England can entertain of ever discharging or moderating her incumbrances.

King's  
Civil List.

But, before any part of the consolidated fund (the surpluses whereof are one of the chief ingredients that form the sinking fund) can be applied to diminish the principal of the public debt, it stands mortgaged by Parliament to raise an annual sum for the maintenance of the King's household and the civil list. Under this latter term is now included the King's revenue in his own distinct capacity, the rest being rather the revenue of the public, though collected and distributed again in the name of and by the officers of the Crown, it now standing in the same place as the hereditary income did formerly; and as that has gradually diminished the parliamentary appointments have increased. Upon the whole it is doubtless much better for the Crown, and also for the people, to have the revenue settled upon the modern footing rather than the ancient. For the Crown, because it is more certain, and collected with greater ease: for the people, because they are now delivered from the feudal hardships, and other odious branches of the prerogative. And though complaints have sometimes been made of the increase of the civil list, yet if we consider the sums that have been formerly granted, the limited extent under which it is now established, the revenues and prerogatives given up in lieu of it by the Crown, and (above all) the diminution of the value of money compared with what it was worth in the last century, we must acknowledge these complaints to be void of any rational foundation: and that it is impossible to support that dignity which a King of Great Britain should maintain with an income in any degree less than what is now established by Parliament.

This finishes our inquiries into the fiscal prerogatives of the King; or his revenue, both ordinary and extraordinary. We have therefore now chalked out all the principal outlines of this vast title of the law, the supreme executive magistrate, or the King's Majesty, considered in his several capacities and points of view. But, before we entirely dismiss this subject, it may not be improper to take a short comparative review of the power of the executive magistrate, or prerogative of the Crown, as it stood in former days, and as it stands at present. And we cannot but observe that most of the laws for ascertaining, limiting, and restraining this prerogative have been made within the compass of little more than a century past; from the petition of right, in 3 Car. I., to the present time. So that the powers of the Crown are now to all appearance greatly curtailed and diminished since the reign of King James the First: particularly by the abolition of the Star Chamber and High Commission Courts in the reign of Charles the First, and by the disclaiming of martial law, and the power of levying taxes on the subject, by the same prince: by the disuse of forest laws for a century past; and by the many excellent provisions enacted under Charles the Second; especially the abolition of military tenures, purveyance, and pre-emption: the Habeas Corpus Act; and the Act to prevent the discontinuance of Parliaments for above three years; and, since the Revolution, by the strong and emphatical words in which our liberties are asserted in the Bill of Rights, and the Act of Settlement; by the Act of triennial, since turned into septennial elections; by the exclusion of certain officers from the House of Commons; by rendering the seats of the Judges permanent, and their salaries liberal and independent; by restraining the King's pardon from obstructing parliamentary impeachments; and above all by the passing of the Reform Act. Besides all this, if we consider how the Crown is impoverished and stripped of all its ancient revenues, so that it must greatly rely on the liberality of Parliament for its necessary support and maintenance, we may perhaps be led to think that the balance is inclined pretty strongly to the popular scale.

Review of  
outlines of  
Prerogative.

Limitations.



and that the executive magistrate has neither independence nor power enough left to form that check upon the lords and commons which the founders of our constitution intended.

**Powers,**

But, on the other hand, it is to be considered that every prince, in the first Parliament after his accession, has by long usage a truly royal addition to his hereditary revenue settled upon him for his life; and has never any occasion to apply to Parliament for supplies, but upon some public necessity of the whole realm. This restores him to that constitutional independence, which at his first accession seems, it must be owned, to be wanting. And then, with regard to power, we may find perhaps that the hands of government are at least sufficiently strengthened: and that an English monarch is now in no danger of being overborne by either the nobility or the people. The instruments of power are not perhaps so open and avowed as they formerly were, and therefore are less liable to jealous and invidious reflections: but they are not the weaker upon that account. In short, our national debt and taxes (besides the inconveniences beforementioned) have also in their natural consequences thrown such a weight of power into the executive scale of government as we cannot think was intended by our patriot ancestors; who gloriously struggled for the abolition of the then formidable parts of the prerogative, and by an unaccountable want of foresight established this system in their stead. The entire collection and management of so vast a revenue, being placed in the hands of the Crown, has given rise to such a multitude of new officers, created by and removable at the royal pleasure, that they have extended the influence of government to every corner of the nation. These, it requires but very little penetration to see, must give that power on which they depend for subsistence an influence most amazingly extensive. To this may be added the frequent opportunities of conferring particular obligations, by preference in loans, subscriptions, tickets, remittances and other money transactions, which will greatly increase this influence; and that over those persons whose attachment, on account of their wealth, is



frequently the most desirable. All this is the natural, though perhaps the unforeseen consequence of erecting our funds of credit, and to support them, establishing our present perpetual taxes: the whole of which is entirely new since the Restoration in 1660; and by far the greater part since the Revolution in 1688. And the same may be said with regard to the officers in our numerous navy and army, and the places which the navy and army have created. All which put together give the executive power so persuasive an energy with respect to the persons themselves, and so prevailing an interest with their friends and families, as will amply make amends for the loss of external prerogative.

But, though this profusion of offices should have *Army.* no effect on individuals, there is still another newly acquired branch of power: and that is, not the influence only, but the force of a disciplined army: paid indeed ultimately by the people, but immediately by the Crown: raised by the Crown, officered by the Crown, commanded by the Crown: although kept on foot, it is true, only from year to year, and that by the power of Parliament; but during that year they must, by the nature of our constitution, if raised at all, be at the absolute disposal of the Crown. And there need but few words to demonstrate how great a trust is thereby reposed in the prince by his people; a trust that is more than equivalent to a thousand little troublesome prerogatives.

Add to all this, that besides the civil list, the immense revenue, which is annually paid to the creditors *Public Revenue.* of the public, or carried to the sinking fund, is first deposited in the royal exchequer, and thence issued out to the respective offices of payment. This revenue the people can never refuse to raise, because it is made perpetual by Act of Parliament; which also, when well considered, will appear to be a trust of great delicacy and high importance.

Upon the whole, therefore, I think it is clear that, whatever may have become of the nominal, the real power of the Crown has not been too far weakened by any transactions in the last century. Much is indeed

given up; but much is also acquired. The stern commands of prerogative have yielded to the milder voice of influence: the slavish and exploded doctrine of non-resistance has given way to a military establishment by law; and to the disuse of Parliaments has succeeded a parliamentary trust of an immense perpetual revenue: the management of which, more especially of late years, has been open to public and parliamentary scrutiny, and the fullest inquiry allowed as to its appropriation. When, indeed, by the free operation of the sinking fund, our national debt shall be lessened, although little can be now hoped from this; when the posture of foreign affairs, and the universal introduction of a well-planned and national militia, will suffer our formidable army to be thinned and regulated; and when (in consequence of all) our taxes shall be gradually reduced; this adventitious power of the Crown will slowly and imperceptibly diminish, as it slowly and imperceptibly rose. But till that shall happen, it will be our especial duty, as good subjects and good Englishmen, to reverence the Crown, and yet guard against corrupt and servile influence from those who are entrusted with its authority; to be loyal, yet free; obedient, and yet independent; and, above everything, to hope that we may long, very long, continue to be governed by sovereigns, who, like Her present Majesty and many of her illustrious ancestors, in all those public acts that have personally proceeded from themselves, have manifested the highest veneration for the free constitution of Britain; have already in more than one instance remarkably strengthened its outworks; and will therefore never harbour a thought, or adopt a persuasion, in any the remotest degree detrimental to public liberty.

Having explained, as I think, sufficient particulars concerning the King's revenue in England to enable us to understand the origin of the several items of his revenue, I now proceed to consider his revenue in Canada.

King's  
revenue in  
Canada.

The King's revenue in Canada is almost entirely derived from what have been mentioned as the extraordinary sources of revenue. What have been above mentioned as the ordinary sources of the King's revenue

are a very small part of the revenues of this country. In fact, just as in England itself, the extraordinary revenues have become the ordinary source from which the public expenditures are met, the ordinary revenues, so-called, have dwindled to insignificance.

Under the British North America Act the rights of raising a revenue for Dominion purposes assigned to the Dominion Parliament are different from those of the provinces. By section 91, numbers 1, 3 and 4, the Dominion Parliament has the right to legislate concerning

Rights of Dominion to raise a revenue.

B. N. A. Act, sec. 91, Nos. 1, 3, 4.

- (a) The public debt and property;
- (b) The raising of money by any mode or system of taxation, and
- (c) The borrowing of money on the public credit.

Besides these general powers the following revenue-producing sources are specially assigned to the same authority:

- (d) Postal service; Ibid. No. 5
- (e) Sea coast and inland fisheries; Ibid. 12.
- (f) Ferries between a province and any British or foreign coasts or between two provinces; Ibid. 13.
- (g) Fees from patents and copyrights also belong to the Dominion, and also those items contained in the third schedule of the Act, which I have already mentioned. Ibid. 22, 23.

Lastly, by section 107, all stocks, cash, bankers' balances and securities for money belonging to each province at the time of the union were to become the property of Canada, and to be taken in reduction of the respective debts of the provinces at the union. Ibid. sec. 107.

By section 102 of the same Act all duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick, before and after the time of the union, namely, 1st July, 1867, had any power of appropriation except those portions reserved to the Provinces are to form the Consolidated Revenue Fund. This fund is to be appropriated for the public service of Canada. Ibid. sec. 102.

Assump-  
tion of  
liabilities  
of Pro-  
vinces by  
Dominion.

To the provinces have been assigned certain sources of revenue, which I will enumerate in their proper place. Lastly, as between the Dominion and the provinces there was an assumption of liabilities as follows :\*

B. N. A.  
Act, secs.  
111 to 119.

1. The Dominion assumed the debts and liabilities of each province at the union.

2. The provinces became liable to the Dominion for any surplus over their debt, as follows:

Ontario and Quebec jointly	
for any sum over.....	\$62,500,000
Nova Scotia.....	8,000,000
New Brunswick.....	7,000,000

in each case with interest at five per cent. The debts of the provinces were to be reduced, as above stated, by the amount of stocks, cash, bankers' balances and securities for money to be taken over by the Dominion.

3. The Dominion was obliged by the Act to pay yearly to the provinces for the support of their governments as follows :

Annual  
subsidies.

Ontario . . . . .	\$80,000
Quebec . . . . .	70,000
Nova Scotia . . . . .	60,000
New Brunswick . . . . .	50,000

Also, an annual grant in aid of each province equal to 80 cents per head of the population, as ascertained by the census of 1861. These grants are in full settlement of all demands on the Dominion, and are payable half-yearly, in advance, to each province. But the Dominion deducts from such grants as against any province all sums chargeable as interest on the public debt of the province, in excess of the amounts stipulated for by the Act. Certain special provisions were made with regard to Nova Scotia and New Brunswick.

Nova  
Scotia and  
New  
Brunswick  
special  
rants.

1. The grant of 80 cents per head was to be calculated according to the census of 1861, and subsequently by each decennial census, until the population of each of these provinces reached 400,000, at which rate the

54-55 Vict.  
c. 6 (Dom.)

\* On these matters and other disputed questions of account an arbitration is provided for by Dominion and Provincial legislation.

grant was to remain. By the census of 1891 the population of the two provinces was as follows:

Nova Scotia .....	450,523
New Brunswick .....	321,294

2. New Brunswick was to receive for the period of ten years after the union an additional allowance of \$63,000 per annum.

3. If the public debt of Nova Scotia and New Brunswick, respectively, did not at the union amount to \$8,000,000 and \$7,000,000, they were to receive from the Dominion interest at five per cent. half-yearly on the difference between the actual amount of their respective debts and the above-mentioned amounts of \$8,000,000 and \$7,000,000. As a fact, the debts were above these two sums.\*

4. As long as the public debt of New Brunswick remained under \$7,000,000, a deduction was to be made from the additional annual allowance of \$63,000 equal to the interest at five per cent. on that deficiency.

5. Certain special lumber dues were allowed in New Brunswick, but New Brunswick having passed an Act repealing these export duties, the Dominion allows that province \$150,000 per annum as indemnity for their loss.

Since the Confederation Act other provinces have been added to the Dominion as follows :

British Columbia.

Prince Edward Island.

Manitoba.

Provinces  
added sub-  
sequently  
to Confed-  
eration.

Debts of these provinces have in like manner been assumed by the Dominion.

With regard to these provinces, and also with regard to the old provinces, readjustments of the debts assumed

Readjust-  
ment of  
provincial  
debts.

\* The Public Debts of Canada, Nova Scotia and New Brunswick at the time of the Union were respectively as follows :

	<i>Principal.</i>	<i>Interest.</i>
Canada.....	\$67,912,408	\$3,589,308
Nova Scotia.....	8,230,500	297,580
New Brunswick.....	7,195,200	349,288

R. S. C.  
c. 46.

by the Dominion have from time to time been made. At present those old provinces stand as follows:

Ontario and Quebec ..from	\$62,500,000—	\$73,006,088.84
Nova Scotia .....	" 8,000,000—	9,186,756.00
New Brunswick.....	" 7,000,000—	8,807,720.00

The subsidies above mentioned to the old provinces were increased as if from the 1st July, 1867, although the increase was consented to on 1st January, 1873. The arrears were computed and fixed as follows:

The yearly increase would have amounted in each case as follows:

		Capitalized at
Ontario and Quebec.....	\$269,875.16	\$5,397,503.13
Nova Scotia .....	39,939.68	798,793.45
New Brunswick .....	30,225.97	604,519.35

Interest is allowed on these increased subsidies at five per cent.

The Dominion Parliament and the Provincial Legislatures were thus endowed by the British North America Act with certain defined powers of taxation and of raising a national revenue, and also peculiar liabilities.

Consolidated  
Revenue  
Fund of  
Dominion.

The application of this revenue was in like manner defined. As we have seen, the Consolidated Revenue Fund of the Dominion is to be appropriated for the public service of Canada. This appropriation is subject to the following charges:

1. Expenses of collection, management and receipt.
2. Annual interest of the public debts of the provinces of Canada, Nova Scotia and New Brunswick at the union.
3. Salary of the Governor-General. Fixed, as above mentioned, by the Act itself at ten thousand pounds sterling, but subject to alteration by the Parliament of Canada.

Appropriation of  
income of  
Dominion.

The Dominion has, under its general powers of borrowing upon the public credit conferred upon it by the Act, contracted loans, and, in order to secure the repayment of the lenders, has charged upon the income of the

Dominion the repayment of certain of these loans by giving them a preference after the charges fixed by the British North America Act. At present the income of the Dominion is directed to be appropriated as follows :

First, Second and Third. The charges above mentioned.

Fourth. Interest at four per cent. on Intercolonial Railway loan, £3,000,000 sterling, or \$14,600,000, interest guaranteed by England. This was an advance made by England to Canada to enable the latter to build the Intercolonial Railway, which was to be built in order to afford direct means of communication between the Maritime Provinces and Quebec.

Fifth. Sinking fund for that loan at the rate of one per cent. per annum.

Sixth. Any sum issued out of the Consolidated Fund of the United Kingdom under the Canadian Railway Loan Act, 1867 (Imperial Act), with interest at five per cent.

Seventh. The sum of £1,000,000 sterling, raised for the completion of the Intercolonial Railway. The interest on this debt was not guaranteed by England. It was five per cent.

Eighth. North-West Territory purchase from the Hudson's Bay Company, £300,000, or \$1,460,000.

Ninth. Sinking fund to repay last amount at the rate of one per cent. per annum.

Tenth. Any advance made by England to Canada under its guarantee of above loan as provided by The Canada (Rupert's Land) Loan Act, 1869 (Imperial Act), with interest at five per cent.

Eleventh. Loan guaranteed by England under The Canada (Public Works) Loan Act, 1873. The amount of this loan was £3,600,000, with interest at four per cent.

Twelfth. Sinking fund to repay this last-mentioned loan at the rate of one per cent. per annum.

Thirteenth. Any advance by England under its guarantee of above loan as provided by The Canada



(Public Works) Loan Act, 1873, with interest at five per cent.

Fourteenth. The yearly salaries of the Judges of the Supreme and Exchequer Courts.

These items may be simplified as follows :

1. Costs of management.
2. Interest of public debts of provinces.
3. Salary of Governor-General.
4. Preferred Loans as above.\*
5. Salaries of Judges of Supreme and Exchequer Courts.

England's  
generous  
assistance.

On looking at this list one reflection presents itself. It shows conclusively how great has been England's

\* The history of these loans is as follows :—

(1) £3,000,000 authorized by Imperial Act 30, 31 Vict. c. 16 (1867), for the building of the Intercolonial Railway. This loan was floated in London as follows :

1869—£1,500,000 one moiety of the £3,000,000  
500,000 on the credit of Canada only.

£2,000,000

1873—£1,500,000 the second moiety of the £3,000,000.  
300,000 the Rupert's Land Loan, being No. 2 next  
referred to.

£1,800,000

(2) £800,000 authorized by Imperial Act 32, 33 Vict. c. 101 for the purchase of Rupert's Land.

(3) £3,600,000, Imperial Act 33, 34 Vict. c. 45, authorized the guarantee of a loan of £8,000,000 for the construction of the Canada Pacific Railway and the canals. Imperial Act 33, 34 Vict. c. 82 (Canada Defences Act) authorized a guarantee of loan of £1,100,000 for fortifications. This latter Act was repealed, and by 36, 37 Vict. c. 45 (1873), the amount of the guarantee was restricted to £3,600,000, the proceeds not to be applied to erecting fortifications but towards the Canada Pacific Railway and the canals. Canada under this guarantee obtained loans as follows :

1875—£1,500,000 of the guaranteed issue.  
1,000,000 on credit of Canada only.

£2,500,000

1878—£1,500,000 of the guaranteed issue.  
1,500,000 on credit of Canada only.

£3,000,000

The other £600,000 remained unissued until 1885, when £200,000 were disposed of. The balance is held as reserve under R. S. C. c. 31, s. 3, against the note circulation of the Dominion. The information as to the disposal of this £600,000 I owe to the kindness of Mr. Courtney, Deputy Minister of Finance.

help to Canada. In order to create the Dominion the Intercolonial Railway was necessary. The Dominion could not have been created without it. England furnished the money and guaranteed the interest. Again, when Canada acquired the North-West Territories, without which the Dominion would be poor indeed, England furnished the money and guaranteed the interest. When money was required for public works the same thing happened. Truly this "Mother of Nations" has been generous to her children. Another reflection that forces itself upon the mind is that Canada, in thus setting out to make her own way, has incurred mighty responsibilities, which it will take every exertion to fulfil. Her resources are great and her territory extended, but her liabilities, for which the public faith is pledged, are enormous. It would be a reproach to the name of Canadian if these liabilities are not provided for, and the national credit sustained.

Modes of  
borrowing  
allowed to  
Dominion.

The history of the successive loans which have been made to the Dominion is not part of my plan. What I have to explain is the mode which the law allows of obtaining these advances, and this law is as follows :

The Dominion Parliament has provided that the following methods may be adopted by the Governor in council where it is desired to raise money for Dominion purposes :

R. S. C.  
c. 29, s. 6.

(1) Debentures of Canada may be issued, the principal and interest of which are to be chargeable on the Consolidated Revenue Fund. These debentures may be for such time and at such rate of interest, not exceeding six per cent. per annum, as the Governor in council may determine.

(2) Dominion Stock, bearing interest at any rate not exceeding six per cent. The principal and interest to be chargeable to the Consolidated Revenue Fund. A sinking fund may be provided for Dominion Debentures or Dominion Stock, not to exceed one-half of one per cent.

Tempo-  
rary loans.

(3) **Terminable Annuities.** To be based at a rate of interest not exceeding six per cent.

(4) **Exchequer Bills or Exchequer Bonds** in sums of not less than \$400, with interest not exceeding six per cent. per annum, redeemable as the Governor in council may direct.

Any one part of the funded debt may be changed by substituting one class of securities for another, but neither the capital nor the annual charge for interest on the debt can be increased. But if four or five per cent. Dominion stock is substituted for securities bearing a higher interest, then the amount of capital may be increased by an amount not exceeding the difference between the then present value of the security bearing the higher interest, and that of the stock or debentures substituted for it.

Provision is also made for the raising of temporary loans in case the exigencies of the public service demand it. These temporary loans must not bear a higher rate of interest than seven per cent. The amount to be raised must never exceed the amount of the deficiencies in the Consolidated Revenue Fund to meet the charges then due, and can be applied to no other purpose whatsoever. An account in detail of all temporary loans must be laid before the House of Commons within the first fifteen days of the next session.

Having thus enumerated the powers as to the public revenue and expenditure of the Dominion, the next subject that presents itself is the mode of collection and management of the revenue.

Fiscal  
agents.

R. S. C.  
c. 29.

Auditor-  
General.

Fiscal agents may be appointed for the negotiating of loans and for the general purposes of services connected with the management of the debt. For the collection of the revenue, officers are appointed who, when they receive a salary at or exceeding \$1,000 a year, cannot exercise any other calling or employment. An officer is appointed, called the Auditor-General, who examines the public accounts of Canada and reports to the House of Commons. All public moneys are paid to the credit of the account of the Minister of Finance and

Receiver-General. The Minister of Customs, the Minister of Inland Revenue, Postmaster-General, and all other Ministers or persons charged with receipt of public moneys, must cause the gross revenue of their several departments to be paid to the account of the Minister of Finance and Receiver-General. When any sum of money has been granted to Her Majesty by a resolution of the House of Commons, or by an Act of Parliament, to defray expenses for any specified public services, the Governor-General may, under his sign manual, countersigned by a member of the Treasury Board, authorize and require the Minister of Finance and Receiver-General to pay such expenses. The Minister of Finance must issue credits on the application of the Auditor-General in favour of the various departments. Statements must be rendered monthly to the Auditor-General and Minister of Finance, and no credit must issue in favour of any officer or person in excess of any appropriation authorized by an Act of Parliament. No cheque for public money can issue except on the certificate of the Auditor-General that there is parliamentary authority for the expenditure, unless there is an opinion of the Attorney-General of Canada that there is authority. If, when Parliament is not in session, any accident happens to any public work or building, requiring immediate outlay, or any other occasion arises when any expenditure, not foreseen or provided for by Parliament, is urgently and immediately required, then the Governor in council may sign a special warrant for the issue of the amount required. The Auditor-General must be furnished with vouchers that all work performed or material supplied is according to contract, or, if not covered by contract, that the price is fair and just. The public accounts of the Dominion include the period from the 30th of June in one year to the 30th of June in the next year, which period constitutes the financial year. All payments submitted to Parliament must be for services coming in course of payment during the financial year, and all balances of appropriation which remain unexpended at the end of the financial year lapse and must be written off. An account may be kept open for

Mode of  
expendi-  
ture.

Special  
warrants.

Financial  
year.

three months after the end of the financial year by order in council, but not longer. All appropriation accounts must be examined by the Auditor-General, and in his report to the House of Commons he must call attention to everything which he considers noteworthy.

Dominion  
notes.

R. S. C.  
c. 31.

The Governor in council may authorize the issue of Dominion notes to an amount not exceeding \$20,000,000, by amounts not exceeding \$1,000,000 at one time, and not exceeding \$4,000,000 in any one year. For securing the redemption of these notes an amount in gold, or in gold and Canadian securities guaranteed by the Government of the United Kingdom, equal to not less than twenty-five per cent. of the amount of the notes, must be kept in hand; at least fifteen per cent. of the total amount of the notes being held in gold. These notes are a legal tender in every part of Canada, except at the offices at which they are respectively made payable.

Public  
accounts  
of the  
Dominion.

Such are the rules laid down for the raising and management of the revenue of the Dominion. The accounts of Canada are kept in three divisions. The first covers the Consolidated Revenue Fund, and includes all the ordinary sources of revenue and expenditure. The second includes, on one side, receipts from loans, and, on the other, expenditure on account of obtaining loans and charges for retiring or repaying loans obtained. The third covers trust funds held by the Dominion, such as post-office savings bank accounts, contractors' deposits and the suspense accounts of the provinces.\* In analyzing the public accounts, therefore, in order to

\*I could have wished to have appended to this part statements taken from official sources, which would show at a glance the financial history of the Dominion since its inception. My reason for so doing would be that any student of the laws must understand the constitution as well. He cannot understand that constitution unless he watches its practical results. These results, from a financial point of view, would be exhibited in these tables, and hence the necessity for their study. Besides, after having learned the history of the English mode of taxation and traced its origin, it would be interesting, as well as instructive, to see how we in Canada have applied the lessons taught us. I am prevented by want of space and other causes from inserting these tables. The information can be obtained from the Year Book, published annually by the Dominion Government, a useful publication, which should be studied by every Canadian.

ascertain what the country is earning, as distinguished from what it is receiving, it is necessary to dissect the statements distinguishing the receipts arising from sources of revenue from receipts by way of loan.

I now turn to the consideration of the various principal items of the revenue of the Dominion. I shall explain the rules which the law has laid down for the collection or raising of these more important items.

1. Customs—as defined above. These are the duties, toll, tribute, or tariff payable upon merchandise exported or imported. There are, therefore, export and import duties. The former at present may be levied upon various kinds of timber and also logs.\* The latter are levied upon a very long list of articles. They are either levied ad valorem, that is, upon the value of the goods at so much per cent., or specifically, that is, at a certain fixed rate for each article. The mode of ascertaining the value of the goods is to take their fair market value when sold for home consumption at the principal markets of the country whence they were exported to Canada. The value is not taken at a cash sale price, but on terms of usual mercantile credit, unless the article is one usually sold for cash. The cost of inland transportation, shipment and transshipment, except in the case of goods imported from Great Britain and Ireland, is added to the price of the goods in order to ascertain the value. In order to secure a just, faithful and impartial valuation of all goods imported into Canada, and just and proper entries of their actual or fair market value, and of their weights and measures and quantities, appraisers are appointed. These officials must ascertain in the way they reasonably best can the proper price of the goods on the basis above stated, and other particulars, so that the correct duty may be collected. Information is gained from importers in the following manner: Masters of vessels must report in writing to the collector of customs, stating—(1) The arrival of the vessel, her voyage, her name, country and tonnage, her port of registry, the name of the master, the country of the owners, the number and names of the passengers

Customs duties.

Exports and imports.

R. S. C. c. 32.

Mode of valuing goods.

Appraisers

Report by masters of vessels.

\* See 57-58 Vict. c. 33, sec. 13 (Dom.) Export of game is prohibited.

and the number of the crew. (2) Whether the vessel is laden or in ballast. If laden, the marks and numbers of every package or parcel of goods on board and where laden. If any goods are stowed loose they must also be stated. (3) The place where and the persons to whom the goods are consigned must appear, and where any and what goods, if any, have been laden or unbroken during the voyage. (4) What part of the cargo and which of the passengers it is intended to land at that port, and the destination at any other port in Canada of the remainder must be stated. (5) What part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board, must also be set out. A master of a vessel arriving by inland navigation must report in the same way the goods on board his vessel. The goods and their bills of lading must be also produced. A penalty of four hundred dollars may be incurred by unloading before making this report, or by false statement, and all goods not reported may be seized. Conductors of railway trains carrying freight from any foreign port must, in like manner, declare the freight, under a similar penalty for fraudulent concealment. Any person arriving in Canada by any vehicle or on foot, and carrying goods, must also report in writing to the nearest customs officer, stating the goods.

Entry of  
goods by  
importer.

This report of the carrier is, then, the first step which is taken. The next step is taken by the importer, who enters the goods. If imported by sea, the entry must be made within three days after the arrival of the goods. If by inland navigation in a decked vessel of over one hundred tons, it must be made within twenty-four hours. If by inland navigation in any undecked vessel, or in any vessel less than one hundred tons, or by land, the entry must be made forthwith. Invoices must be produced, giving all particulars, to enable the duty to be ascertained. The invoice must be attested by the oath of the owner, or, if the owner is not the importer, by the oath of the importer or consignee. The oath of the non-resident owner or manufacturer may be further required in cases of doubt. When the customs officer is satisfied as to the nature and the value



of the goods, then the duties must be paid. A permit is then given for the unloading of the goods, and their conveyance further in Canada if required. An importer may, however, not wish to unload his goods at once, or may not be in a position to pay the duties immediately, or he may wish to deal with part of the goods and not with the whole of them. In order to facilitate merchants in this direction certain ports of entry are made also warehousing ports. At these places goods may be removed to warehouses, where they are stored under Government supervision. The importer must give security by his own bond for the payment of the duties and observance of customs requirements, the penalty of the bond being double the amount of the duties. When the duty has been thus secured, the goods may be removed, still under the control of the customs, from one warehouse to another or from one port to another. Bulk may be broken, and the goods dealt with according to the requirements of the case, with the permission of the inspector, and all duties being paid on the portions disposed of, or, if necessary, fresh security taken. No transfer in warehoused goods is valid unless in writing, signed by the inspector, or by process of law. The transfer must be produced to the collector and by him recorded. All goods must be finally cleared from the warehouse within two years, otherwise they may be sold for the duty. No payment of duties can be postponed in any way unless the goods are warehoused.

Permits.

Warehousing.

Where a vessel is carrying goods outwards from Canada, the master must make an entry outwards corresponding to the entry inwards. If a vessel is discharging cargo or ballast, and it is desired to load her with fresh cargo before the old cargo is altogether unloaded, what is called a "stiffening order" is got from the customs, permitting this to be done. Before the vessel departs the master brings a "content" to the customs officer, showing particulars of all goods laden, verified by declaration. When all necessary information as to cargo and passengers has been obtained, a clearance is given. This clearance states particulars as to the merchandise on board, if the ship is bound to any other

Entry outwards.

Clearance.

port in Canada. Otherwise it states whether the vessel is with merchandise or in ballast. A penalty of four hundred dollars may be imposed for leaving without a clearance. Before a clearance is granted invoices must be delivered to the customs by owners, ship-owners, or consignors of goods. Particulars similar to those required for entry inwards must be given to enable the amount of duty to be ascertained, and the duty must be paid before clearance can be issued. Where goods are exported from a warehouse the duties must be secured by a bond of the exporter and one other person. In the case of entry inwards the Government has the security of the goods. In the case of entry outwards the goods are gone, hence the necessity for a second bondsman. The penalty of the bond is in double the duties on importation that the goods shall be actually exported, and that proof of such exportation shall be furnished within a time fixed by the bond. Goods to be exported from Canada by rail or other land conveyance, must be also entered for exportation at the nearest custom house. An invoice of the goods is filed, verified by declaration, and the duty must be paid before the goods are removed.

Mode of  
enforce-  
ment of  
payment  
of duties.

These are the methods by which the duties of customs are ascertained and collected. Their payment is enforced by sale of the goods, where the goods are seized, and false statements, as we have seen, are punishable by fine. Smuggling is prohibited under penalties of fine and imprisonment. In order to prevent smuggling stringent provisions are enacted. Vessels hovering in British waters within one league of the coast may be boarded by a customs officer and warned off. If the vessel remains for twenty-four hours after the warning she can be taken into port, and if contraband goods are found on board the vessel is confiscated. If a vessel with dutiable goods on board enters any other than a port of entry, unless from stress of weather, the goods, unless they belong to an innocent owner, are liable to seizure, and the vessel, if of less value than eight hundred dollars, may be forfeited. If the vessel is worth more than eight hundred dollars a fine of that amount is imposed, and the vessel is held for the amount.

Provisions  
to prevent  
smuggling

If not paid within thirty days the vessel can be sold. If goods are smuggled by train the car is seized and becomes forfeited. All railway or express servants privy to the smuggling are liable to fine and imprisonment. Extensive powers of search are given to customs officers, and, if necessary, writs of assistance are granted by the courts to aid them.

A very important provision is made to prevent undervaluation of goods by allowing the customs officer to take, on behalf of the Crown, the goods at the price they were valued at by the importer, with ten per cent. additional. The goods are then sold, and fifty per cent. of the proceeds, after repayment to the Crown of the amount paid and the legal duty, are handed over to the customs officer as a bonus.

Bonus to  
customs  
officer.

2. The next source of revenue to be considered is the Excise. I have already stated very fully the nature of this impost. It remains to be seen upon what articles it is levied in Canada, and how it is enforced. At present the following industries are subject to excise: Distilleries, establishments for rectifying and compounding of spirits, malt houses, tobacco and cigar manufactories, bonded manufactories. For all of these occupations licenses are required, for which fees varying in amount must be paid. Notice must be given to the collector of inland revenue of intention to work any of these enterprises. If, after work is begun, there is an interruption of more than one week at a time, a fresh notice of intention to begin must be given. Special provisions are made as to the requirements of each kind of business, which are too technical to be repeated here, but some of the obligations apply to all persons engaged in these occupations. No person thus licensed can carry on his business during Sunday, or between six o'clock in the evening and six o'clock in the morning. Over the premises must be placed the name of the person or firm carrying on the business. Over each separate apartment must also be placed its designation. Stock books must be kept, showing day by day the quantity of stock brought in, and the quantity manufactured and

Excise.  
R. S. C.  
C. C.

Restrictions on  
persons  
carrying  
on business  
subject to  
excise.

sent out. A yearly inventory must also be furnished on the 1st of July of the raw material and material in process of manufacture. All books must be kept as required by the Department of Inland Revenue, and all weights and measures must be tested and verified by it. Duties of excise are charged in addition to license duties, and are due and payable on the sixth day of each month on the goods manufactured during the preceding month. No goods can be removed until the duties are paid or secured by bond. Excisable goods cannot be removed between six o'clock in the evening and seven o'clock the next morning.

Bonded  
Ware-  
house.

Articles subject to excise duty may be placed in what is called a bonded warehouse. The person who has such a warehouse must execute a bond for an amount equal to the sum which it is estimated the duty on the average quantity of goods in the warehouse will amount. The building is secured by the joint lock of the Department of Inland Revenue and the owner or bailee of the warehoused goods. Warehoused goods are at the risk of the owner, and, unless destroyed by fire, the duty remains payable. The duty is computed when the goods are entered, and the goods cannot be removed until the duties are paid. If a bonded warehouse is not on premises for which a license is issued, a special license fee is required. In all cases revenue officers are allowed to enter and inspect buildings, machinery and apparatus, and, if necessary, to make a forcible entry. Courts will grant writs of assistance in proper cases. Before an action can be brought against a revenue officer for anything done in the exercise of his duty, one month's notice of action must be delivered to him. Every action must be brought within three months after the cause arose. The defendant may, within one month after receipt of the notice, tender amends, and, if found sufficient, he is entitled to a verdict. If the case proceeds to trial, and the Judge certifies that the defendant acted upon probable cause, the plaintiff is entitled to a verdict for only twenty cents, without costs.

Protection  
to revenue  
officers.

The penalties for infringement of the Act are very severe, including seizure and forfeiture of goods, machinery, stock and apparatus. When seized, the goods are taken possession of by the officer of inland revenue, marked and inventoried. They can then be sold or otherwise dealt with as the Minister of Inland Revenue directs. The person from whom the goods were taken is allowed one month wherein to give notice to the department that he intends to claim the goods. They may be re-delivered to the owner, on his furnishing security by bond for double the value in case of condemnation. An information is then filed in Court for the condemnation of the goods, and notice is posted up in the office of the Court, and also in the office of the Collector of Inland Revenue. The notice remains posted up for one month, and after the expiration of that time, the Court hears and determines the question of condemnation or release. If the security above mentioned is not furnished, the goods may, after the expiration of a month, be sold without any formal condemnation.

Penalties  
for  
infringe-  
ments.

In any action on account of any seizure or entry, if a verdict is found for the claimant, but the Judge certifies that there was probable cause for such seizure or entry, the claimant cannot be allowed his costs of the action. If an action be brought against any person on account of any seizure in which the judgment is given against the defendant, but the Judge certifies that there was probable cause for the seizure, the plaintiff, besides the thing seized or its value, cannot get more than twenty cents damages, nor can he get costs of suit, nor can the defendant be fined more than ten cents.

3. The next item of revenue in the Dominion to be considered is the Post Office. I do not consider as within my task the details of management of this department. Suffice it to say that the Postmaster-General has the sole and exclusive privilege of sending and receiving letters in Canada. This privilege does not cover—

Post office.  
R. S. C.  
c. 35.

1. Letters sent by a friend on his journey.
2. Letters sent by a messenger on purpose.
3. Commissions from a Court of Justice.

4. Letters addressed to a place out of Canada, sent by sea by a private vessel.

5. Letters lawfully brought into Canada and posted at the nearest post office.

6. Letters of merchants and owners of vessels, sent by vessel or messenger, and delivered without pay or reward.

7. Letters concerning goods to be sent with the goods by common carriers without pay or reward.

Printed books, pamphlets and newspapers need not be sent by post.

There are some isolated points of law connected with the post office which it is desirable to note, as follows :

The Postmaster-General may take charge of and deliver to the rightful owner any sum of money or other property stolen or lost from the mails and recovered.

From the time any letter, packet, chattel or money is deposited in the post office for the purpose of being sent by post, it ceases to be the property of the sender and becomes the property of the person to whom it is addressed, or his legal representatives. The Postmaster-General is not liable to any person to whom it is addressed, or his legal representatives. The Postmaster-General is not liable to any person for the loss of any packet or thing sent by post. No mailable matter is, while in the post office, or in the custody of any person employed in the post office, liable to seizure under legal process against the owner, or against the person or legal representative of the person to whom it is addressed. Mail stages are not exempted from toll, unless specially provided in the actual charter authorizing the road or bridge over which the mail is carried. Every ferryman must, upon request and without delay, convey over his ferry all persons carrying mails, and the sum to be paid must be fixed by contract; if any ferryman demands more than the post office authorities or the contractor for carrying the mail are willing to pay, the amount must be fixed by arbitrators, each party naming an arbitrator, and the two arbitrators naming a third; the



decision of any two of the arbitrators is binding. Her Majesty's mail has a right of way over the highways in case of necessity.

In discussing the Executive Government of the Dominion I had occasion to deal with the administrative branch. I there pointed out that to each Minister is assigned a department, over which he presides and for which he is responsible. The three sources of revenue which I have just detailed—Customs, Excise, and the Post Office—are each assigned to a Minister. The remaining sources of revenue may be disposed of more briefly.

4. Public Works. I have already enumerated the public works which come under the superintendence of the Public Works Department. Tenders must be invited for the execution of all works, except in cases of pressing exigency. When contracts are let, security is taken for the due performance of the work. Tolls and dues may be imposed by order in council, and when collected form part of the Consolidated Revenue Fund. Actions for enforcing contracts may be instituted in the name of the Attorney-General of Canada.

Revenue  
from public  
works.

R. S. C.  
c. 36.

See also  
ibid.  
caps. 84, 98

5. Railways and Canals. Regulations for the management of the railways and canals belonging to Canada are much the same as those relating to other public works. Tolls and dues are also collected from this source and form a large part of the public revenue.

From Rail-  
ways and  
Canals.

R. S. C.  
c. 37.

In regard to all public works, railways and canals no deed, contract, document, or writing is binding on the Government unless signed by the Minister or his deputy and countersigned by the secretary of the department. Special provisions are made with regard to Government railways, giving the Minister and his officers and employees rights of entering upon and taking land for the purpose of constructing and operating the roads. These provisions are much the same as those contained in the General Railway Act, of which we shall have to speak later on. A right to claim compensation for cattle killed by the railway is given, provided the cattle are killed or injured through the negligence or wilfulness of some officer, employee or servant of the

Contracts  
relating to  
public  
works.

R. S. C.  
c. 38.

Govern-  
ment  
railways.



Minister. The cattle must not, however, have been straying upon any highway within half a mile from the track crossing or upon any other person's property. Fences to protect the track and farm crossings are required to be made and kept up by the department. When made and properly maintained no liability accrues for cattle killed having gained access through them. A lien for freight charges is allowed upon goods carried, and the goods may be sold if the freight is not paid within ten days after arrival. Ten days' notice of sale must be given. Unclaimed goods may, at the expiration of twelve months and after six weeks' advertisement in the Official Gazette, be sold by auction. The proceeds of sales in all cases form part of the revenue. The Government is not relieved from liability by any notice, condition or declaration in the event of any damage arising from negligence, omission or default of any officer, employee or servant of the Minister. No personal liability of any officer, employee or servant is in such case done away with by any notice. On the other hand, no action can be brought against any officer, employee or servant of the Minister for anything done by virtue of his office, service or employment unless within three months after the act is committed, and upon one month's previous notice in writing. The action must be tried in the county or district where the cause of action arose.

Expropriation of land for public purposes.

52 Vict. c. 13 (Dom).

For purposes of expropriation of land for public purposes of the Dominion powers are given to the Minister who is charged with the construction and maintenance of the public work for which the land is required. Agreements with any person competent to contract may be made for the acquiring of the land. If there is no person competent to contract, the Exchequer Court may appoint a guardian or representative. An agreement may be made for the purchase of the land before it is ascertained by actual description or by any plan, and if within one year the description is completed, or plan made, the contract must be carried out even though in the meantime the land may have been transferred to another person. The compensation, when ascertained,

stands for the land and subject to the same claims. In order to have these claims settled in case of doubt the Attorney-General may file an information in the Exchequer Court calling upon the persons interested to assert their claims. These proceedings bar all claims to the compensation money, and it is distributed by the Court according to the necessities of the case. Costs of proceedings are in the discretion of the Court, and interest may be allowed or disallowed, as the party claiming compensation is or is not in fault in his demand.

6. Public Lands. The lands in Manitoba, the Territories of Canada and British Columbia are the next source of revenue. I do no more than mention them, because the inhabitants of these parts of the Dominion are more directly interested than the inhabitants of Ontario. It must not be forgotten that the inhabitants of the Dominion, including the people of Ontario, have, through their representatives in Parliament, a voice in the management of these lands and an interest in the revenue from them.

Public lands.

R. S. C. cap. 48, 49, 54, 56.

See also 53 Vict. c. 6 (Dom.)

7. Ordnance and Admiralty Lands. These lands are a legacy from times of war and conquest, and are associated with the most stirring incidents of our history. They are divided into two classes: Those reserved for purposes of defence, and those which may be leased or sold. The moneys arising from the dealings with these lands form a source of revenue which is kept in a separate account.

Ordnance and Admiralty lands

R. S. C. c. 55.

8. The Fisheries. I have mentioned that one of the sources of revenue assigned to the Dominion by number 12 of section 91 of the British North America Act is "Sea coast and inland fisheries." The extent of jurisdiction covered by these words is not yet settled. Meanwhile the Dominion and the Province of Ontario have both passed Acts relating to the fisheries, providing for inspection and close seasons. Leases for the natural or artificial propagation of fish may also be authorized.

Dominion fisheries.

R. S. C. c. 95.

Provision has been made for the transfer by the Dominion to the provinces of the foreshore and bed of

54, 55 Vict. c. 7 (Dom.)

Canadian waters. Lands covered by water adjacent to public works belonging to the Dominion are excepted.\*

Dominion  
ferries.

B. N. A.  
Act, sec.  
91, No. 13.

R. S. C.  
c. 97.

51 Vict. c.  
23 (Dom.)

9. Ferries. By the British North America Act jurisdiction over ferries is conferred as follows: The Dominion is charged with ferries between a province and any British or foreign country or between two provinces. Ferries within a province are by implication charged upon the province. Every license of ferry issued by the Dominion must be under the Great Seal, and must be issued by the Governor in council. A license can only be issued after public competition, except those between Canada and any other country. In the case of a ferry between Canada and any other country, a license may be granted for any period not exceeding ten years; this license is liable to cancellation for any violation of the custom laws of Canada or of the foreign country; or for any violations of regulations made by the Governor in council. In the case of a ferry between any two provinces a license may be granted for any period not exceeding five years; the license may be extended for an additional period of five years. The management of the ferries is regulated by the Council. Any person who interferes with the rights of any licensed ferryman is liable to a fine of \$20.

Patents  
and copy-  
rights.

B. N. A.  
Act, sec. 91  
Nos. 22, 23

10. Patents and Copyrights. The nature of these rights will be explained hereafter. They are here mentioned because, as stated, they are specially assigned to the Dominion by the British North America Act, and fees from these sources are part of the Consolidated Revenue Fund.

Banks.

53 Vict. c.  
31 (Dom.)  
R. S. C.  
c. 124.

11. Banks and Banking. As will be seen when we consider this subject further on, these institutions are in continual stringent financial relationship with the Dominion Government. For the present, therefore, I only mention this source of revenue, as also license fees and deposits from insurance companies.

Government  
Savings  
Banks.  
R. S. C.  
c. 21.

12. Government Savings Banks require more special notice here.

\* As to Public Stores and marking thereof, see 50-51 Vict. c. 45 (Dom.)

At Toronto, Montreal, Halifax, St. John, N.B., and other places in the Provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Manitoba and any other province which may be formed, savings banks are established. These banks are under the supervision of an Assistant Receiver-General. In these banks deposits are received on which interest is paid at some rate not exceeding four per cent. per annum. These deposits, and the payments out and expenses of maintaining these banks, are declared to form part of the Consolidated Revenue Fund. If at the end of any month by reason of the amount of deposits in these banks or the post office savings banks (for there, too, savings may be deposited), and by the issue and sale of Dominion stock, or any other public security, the amount of the public debt authorized by Parliament is exceeded, then to the extent of that excess Dominion or old Canada or Nova Scotia or New Brunswick debentures must be purchased and cancelled or held in reserve until there is authority to re-issue them.

51 Vict.  
c. 8, sec. 2  
(Dom.)

See R.S.C.  
c. 35, secs.  
65 to 77,  
and 51  
Vict. c. 8,  
sec. 1.

14. Pawnbrokers' Licenses are also a small source of revenue. I will speak of their other liabilities to the public later on.

Pawn-  
brokers'  
licenses.  
R. S. O.  
c. 128.

15. Navigation and Shipping. The revenue from this source consists chiefly of fees for licenses of various kinds, or forfeitures and penalties for breach of registration laws. The general subject is considered hereafter.

Naviga-  
tion and  
shipping.

16. Fines and Forfeitures. If no other provision is made by law for the application of any fine, penalty or forfeiture within Dominion jurisdiction, which is sometimes done by saying that an informer shall be entitled to a certain share in it, then it belongs to the Crown for the public uses of the Dominion. Any such fine or penalty, or the proceeds of any forfeiture, become part of the Consolidated Revenue Fund. Pecuniary penalties provided for by any Act, if no other mode is prescribed for their recovery, may be recovered by action upon the evidence of one witness other than the person interested in recovering the amount.

For-  
feitures.  
Code 1892,  
secs. 927 to  
930.

I here close the subject of the revenue of the Dominion and turn to that of the Province.

Services of  
provincial  
revenue.

B. N. A.  
Act, sec. 92  
Nos. 2, 3,  
6, 9.

I stated that the British North America Act had assigned to the Dominion certain sources of revenue and others to the provinces. These latter I will now enumerate:

- (a) Direct taxation within the province in order to the raising of a revenue for provincial purposes.
- (b) The borrowing of money on the sole credit of the province.
- (c) The management and sale of public lands belonging to the province and of the timber and wood thereon.
- (d) Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes.

I have also explained the correlative liabilities of the Dominion and the provinces, and stated that subsidies are payable to the provinces by the Dominion.

Joint  
assets of  
Ontario  
and  
Quebec.

Lastly, by the fourth schedule to the Act certain assets were to be the property of Ontario and Quebec conjointly. These assets were:

1. Upper Canada Building Fund.
2. Lunatic Asylums.
3. Normal Schools.
4. Court Houses in Aylmer, Montreal, Kamouraska, Lower Canada.
5. Law Society, Upper Canada.
6. Montreal Turnpike Trust.
7. University Permanent Fund.
8. Royal Institution.
9. Consolidated Municipal Loan Fund, Upper Canada.
10. Consolidated Municipal Loan Fund, Lower Canada.
11. Agricultural Society, Upper Canada.
12. Lower Canada Legislative Grant.

13. Quebec Fire Loan.
14. Temiscouata Advance Account.
15. Quebec Turnpike Trust.
16. Education, East.
17. Building and Jury Fund, Lower Canada.
18. Municipalities Fund.
19. Lower Canada Superior Education.
20. Income Fund.

Adjustment of these assets between the two provinces is still in progress, by the method of arbitration, as before mentioned. See 54, 55 Vict. c. 6 (Dom.)

By section 126 of the British North America Act a Provincial Consolidated Revenue Fund is constituted for each province. This fund is declared to consist of the portions of the duties and revenues reserved by the Act to the respective provinces, and of all duties and revenues raised by them under the Act. The fund is to be appropriated for the public services of the province. Provincial Consolidated Revenue Fund. B. N. A. Act, sec. 126.

The local Legislature, after specifying certain funds, has declared that these and all other duties, revenues and moneys whatsoever of the province over which the Legislature has the power of appropriation are to form the "Consolidated Revenue Fund of Ontario." This fund is to be appropriated for the public service of Ontario. R. S. O. c. 19.

This consolidated revenue fund of the province is placed in charge of the Treasurer of the province, who has also charge of all matters relating to the public revenue. Under him are revenue officers who must give security; no person receiving a salary over \$1,000 a year can hold any other employment. Each officer must take an oath of office that he will perform the duties of his position without accepting any other remuneration than that paid by the public. All public moneys from whatever source are paid to the credit of the Treasurer of the province. Any public officer not transmitting accounts is liable to a fine of \$100. The Provincial Treasurer can call upon any such person to account for and pay over any public moneys received by him; not less Provincial Treasurer. R. S. O. c. 20.

than thirty days or more than sixty days' notice must be given by the Treasurer. Besides the fine above mentioned, there is a civil liability for all sums lost. The Lieutenant-Governor has power to remit any debt, toll or forfeiture in cases where it may be necessary to relax the strictness of the law. A treasury board, consisting of three members of the Executive Council, may be appointed by the Lieutenant-Governor. An officer called the Provincial Auditor is appointed for the purpose of examining the public accounts and reporting thereon to the Legislative Assembly. All checks for public moneys are issued only on the certificate of this officer that there is the legislative authority for this expenditure. In case of emergency the Lieutenant-Governor in council may order a special warrant to be prepared, to be signed by the Lieutenant-Governor, for the amount required; in case of refusal by the Provincial Auditor to certify a check issued by the Provincial Treasurer, the Treasury Board are to be judges of the sufficiency of the Auditor's objection. The Provincial Auditor must prepare and deliver to the Treasurer the public accounts, which are annually laid before the Legislature; they include the period from the 1st of January to the 31st of December in each year, and this period constitutes the financial year. The Lieutenant-Governor in council may, in case of exigency, arising from failure of the revenue or unforeseen causes, direct the Treasurer to effect any needed temporary loan to be charged on the Consolidated Revenue Fund; these loans cannot exceed the amount of the deficiency in the Consolidated Revenue Fund to meet charges thereon. All special matters of this kind must be specially reported by the Provincial Auditor to the Legislative Assembly. Besides the appropriation accounts of the committees of the Legislature, the Provincial Auditor must audit the accounts of all receipts of revenue forming the Consolidated Revenue Fund of the province; the accounts current with the several banks and financial agents of the province; the accounts relating to the issue or redemption of loans, and any other public accounts directed to be examined by the Treasury Board. Stamps are used in lieu of fees and charges,

R. S. O.  
c. 21.

Provincial  
Auditor.

Special  
warrants.

Tempo-  
rary loans.



which form part of the Consolidated Revenue Fund and payable upon legal proceedings. No money is to be paid to or received by any Court, or any officer of any Court for such fees. Any matter or proceeding not duly stamped is absolutely void, unless afterwards stamped by leave of the Court. All stamps must be cancelled when used; and any person who fails to obliterate a stamp is liable to a fine not exceeding \$20; in default of payment, to be imprisoned for a period not exceeding two months. These are the rules relating to the management of the provincial revenue. I now turn to its sources.

Stamps on  
legal pro-  
ceedings.

R. S. O.  
c. 22.

1. The Public Lands of the province are under the management of the Department of Crown Lands, which is presided over by the Commissioner of Crown Lands.

Sources of  
provincial  
revenue.

The Lieutenant-Governor in council may fix the price per acre of the public lands. Licenses of occupation may be issued by the Commissioner of Crown Lands to any person who has purchased, or is permitted to occupy, or has been entrusted with the care of any public land; or who has received or been located on any public lands as a free grant. On receiving this license of occupation, the licensee may take possession and occupy the land subject to conditions of the license. A register is kept in the Crown Lands Office for registering the particulars of any assignment made by the original nominee, or his heir, or legal representative, or subsequent assignee. All assignees take priority in order of registration. On application for a patent by the heir, assignee or devisee of the original nominee, the Commissioner of Crown Lands may inquire into the matter, and if satisfied, may cause a patent to issue. The heir, devisee, and assignee commission, which I will mention later on, has also jurisdiction to order the issue of patents. In case of fraud or error, licenses of occupation may be cancelled. If necessary, an order can be got from the County Judge of the county, directing possession to be given up to the Commissioner of Crown Lands. If a patent has been issued to the wrong party, or contains any clerical error, or wrong description, the defective patent may be cancelled and a

License of  
occupation

Rectifying  
patents.

correct one issued. Where grants for letters patent have issued for the same land inconsistent with each other, or in cases of inconsistent sales, the Commissioner of Crown Lands may adjust the matter, and, if necessary, assign other land; but no claim can be entertained unless it is preferred within five years from the discovery of the error. If the mistake arose by reason of false survey or error in the books of the Crown Lands Department, and there is any deficiency in quantity, then the Commissioner of Crown Lands may issue a grant for other land or refund a proportionate sum of the purchase money. No claim of this kind can be entertained unless made within five years from the date of the patent, nor unless the deficiency is equal to one-tenth of the whole quantity described. Public lands for which no patent has issued, but which have been sold, leased or located as free grants, or appropriated to any person, or which are under license of occupation, are liable to assessment from the date of the sale or appropriation. The Commissioner of Crown Lands must, in the month of February of every year, send to the treasurer of every county a list of all the lands within the county dealt with by the Crown during the preceding year.

The Provincial Secretary must once in every three months furnish to the registrar of every registry division a statement containing a list of all patents of lands, and also copies of all plans or maps within the registry division. All notices relating to Crown lands may be given to the Commissioner of Crown Lands; from time to time lists of the public lands for sale in Ontario may be made out and advertised in the discretion of the Commissioner. The Lieutenant Governor in council may authorize sales or appropriations of land covered with water in harbours, rivers or other navigable waters in Ontario, but shall not interfere with the use of any harbour as a harbour or with navigation. The Lieutenant Governor in council may appropriate any public lands considered suitable for settlement and cultivation, and not being mineral lands or pine timber lands, as free grants to actual settlers. These free grants are confined to the districts of Algoma, Thunder Bay, Rainy

River and Nipissing; and all lands lying between the Ottawa river and the Georgian bay northerly. The person to whom a free grant is allotted is called the locatee; no person can be a locatee unless he is eighteen years or over, nor can any person be located over a greater quantity than two hundred acres. Before location an applicant must make an affidavit stating that he has not been located for any other land, that he is eighteen years of age or upwards, and in case of a female, that she is the sole head of a family, that children under eighteen years of age reside with her; that he believes the land is suitable for settlement and cultivation, and is not valuable chiefly for its mines, minerals or pine timber, and that the location is desired for settlement and cultivation. No patent can issue until the expiration of five years from the date of the location, nor until performance of settlement duties; the locatee must have cleared at least fifteen acres of the land; two acres annually in the first five years, and have built a house fit for habitation at least sixteen feet by twenty feet; he must have actually and continuously resided on the land for the term of five years after the date of location. On failure in the performance of the settlement duties, the location is forfeited. Pine trees, gold, silver, copper, lead, iron or other minerals are reserved from the location. The locatee may use such pine trees as may be necessary for the purpose of building and fencing, and for the purpose of clearing. The patents of all free grant lands contain a reservation of all pine trees, which remain the property of the Crown. Neither the locatee nor any one claiming under him can alienate otherwise than by devise, or mortgage or pledge any land, or any right or any interest in it, before the issue of the patent. No alienation otherwise than by devise, and no mortgage or pledge of the land, or any right or interest in it after the issue of the patent within twenty years from the date of the location, and during the lifetime of the wife of the locatee, is valid, unless it is by deed in which the wife of the locatee is one of the grantors with her husband, and also executes the deed. On the death of the locatee, all his interest in the land descends to his widow

in lieu of dower, but she may elect to have her dower in the land if she chooses. No free grant is in any event liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs, or devise, before the issue of the patent, but after the issue of the patent, and while the land is owned by the locatee, or his widow, heirs or devise, the land during the twenty years next after the date of the location is exempt from attachment, levy under execution or sale for payment of debts; it is not liable to the satisfaction of any debt or liability during that period, except a debt secured by a valid mortgage or pledge of the land, made subsequent to the issue of the patent.

Licenses  
to cut  
timber.

R. S. O.  
c. 28.

The Commissioner of Crown Lands may grant licenses to cut timber on the ungranted lands of the Crown. No license can be granted for a longer period than twelve months. The license vests in the holder all rights of property whatsoever in all trees, timber and lumber, cut within the limits of the license during this term, whether they are cut by authority of the holder of the license, or by any other person with or without his consent; and license holders may seize all trees, timber or lumber and prosecute or sue trespassers. The Government road allowance may be included in the license. If a township council passes a by-law for preserving or selling the timber or trees on the Government road allowance, then the corporation of the township receives two per cent. of the dues received by the Crown for the timber cut within the township. Every person who gets a license must make a return of the number and kinds of trees cut; all timber cut under licenses is liable to the payment of the Crown dues, no matter in whose hands it may have come, and whether manufactured or not. Timber seized for non-payment of dues, after two months may be sold. Persons cutting timber on Crown lands without authority may be fined three dollars for each tree cut or carried away; the person cutting must prove authority. If timber cut without authority has been mixed up with other timber, the whole of the timber mixed is liable to seizure. All timber seized is deemed to be condemned, unless the per-

son from whom it was seized gives notice of claim within one month from the date of the seizure; failing notice, the seizure is reported to the Commissioner of Crown Lands, who may order the sale of the timber after a notice of at least thirty days.

No person can enter upon or use for any purpose whatever any Crown lands without having a license from the Lieutenant-Governor under his hand and seal. Commissioners may be appointed to examine into trespasses, and may give notice to quit, and warrants of removal; if a person removed resumes unlawful occupation, commissioners may commit him to gaol for a term not exceeding twenty days, and he may be ordered to pay a fine to the Crown not exceeding \$80. The commissioners are entitled to the same protection as justices of the peace for any act done by them in the execution of their office.

Trespasses  
on public  
lands.  
R. S. O.  
c. 29.

2. The Mining Lands of the province are under the supervision of the Commissioner of Crown Lands. No reservation of gold, silver, iron, copper or other mines or minerals is inserted in any patent from the Crown granting lands sold as mining lands. Any person may explore for mines or minerals on any Crown lands surveyed or unsurveyed and not located. Crown lands supposed to contain mines or minerals may be sold as mining lands, or when situated within a mining division, may be worked as mining claims. Lands when so sold must be sold in blocks called mining locations. Mining locations are restricted in dimensions to eighty chains in length by forty chains in width, containing three hundred and twenty acres; or forty chains square, containing one hundred and sixty acres, or forty chains in length by twenty chains in width, containing eighty acres, or twenty chains in length by twenty chains in width, containing forty acres. When a mining location borders upon a lake or river a road allowance of one chain wide is reserved along the margin; the width of the location must front on this road allowance. After survey every mining location must consist of a half, quarter, eighth or sixteenth of a section, so as to be not less than forty acres. There is a reservation

Mining  
lands.  
55 Vict.  
c. 9.

for roads of five per cent. of the land granted. Mining locations in unsurveyed territory must be surveyed by a provincial land surveyor, so that the tract may be laid down on the maps in the Crown Lands Department. There is a reservation in patents of mining lands of all pine timber.

Reserva-  
tion of pine  
timber.

Mining  
claims.

The province may be divided into mining divisions, and for every mining division an inspector may be appointed. The inspector is *ex officio* a justice of the peace; he has the power to settle summarily all disputes between licensees as to the expense or forfeitures of mining claims. Any party applying to the Director of the Bureau of Mines may obtain on payment of the fee of \$5 a mining license; this license is in force for one year, and may be renewed at the end of the year. The licensee may mine any mining claim marked or staked out by him; this marking out is limited as follows: For one person, six hundred and sixty feet along a vein or lode by three hundred and thirty feet on each side thereof, measurement from the centre of the vein or lode.

Companies of two or more persons, who each hold a mining lease, may stake out and mark additional feet along a vein or lode in the proportion of one hundred and thirty-two additional feet in length for every additional miner, not to exceed one thousand three hundred and twenty feet in length altogether. If unworked for the space of three months, the claim is forfeited; or if after the expiration of three months it remains unworked for the space of fifteen days. No person can be considered the discoverer of a new mine, unless the place of the alleged discovery is distant at least three miles from the nearest known mine. A party wall of at least fifteen feet thick must be left between every mining claim on Crown lands; this wall must be used in common as a mode of access to the stream where one exists, and must not be obstructed. If a mining claim cannot be worked in consequence of access of water, the inspector may assign another mining claim; if the first claim is not worked within fifteen days afterwards, it is then forfeited.



Special provisions are made as to the working of <sup>Working</sup> mines. No boy under the age of fifteen can be employed underground; no girl or woman can be employed at mining work; a boy of fifteen years old and under seventeen cannot be employed in any mine below ground for more than forty-eight hours in any one week, or more than eight hours in any one day. A register of all boys must be kept. Where there is a shaft or inclined plane of any kind, and an engine, no person can be allowed in charge of the engine unless he is a man at least twenty years of age. If the engine is worked by an animal, the person driving the animal must not be under sixteen years of age. No wages can be paid to persons employed in mines at any public house. Annual returns of all employees must be sent in to the Bureau of Mines. If any person is killed or injured in a mine, notice must be sent of the death to the inspector within twenty-four hours after the death comes to the knowledge of the owner or agent. All openings or abandonings of mines or shafts must be communicated to the inspector. All abandoned mines must be kept securely fenced, with the words "abandoned mining shaft" painted on the fence. No inspector can be interested in any mine. Special rules are made as to ventilation, blasting, fencing of old shafts, safety from water, fencing, machinery, etc. The price of Crown land varies with the location, and is laid down by the Mining Act itself. The Lieutenant-Governor may set apart any locality found to be rich in mines and minerals. The grantee and owner of any mining location must, during the seven years immediately following the issue of the patent, expend, where the quantity contained in the patent exceeds one hundred and sixty acres, \$4 an acre in opening up mines. Where the quantity is one hundred and sixty acres or less, \$5 an acre must be expended. The expenditure may consist of labour or materials; if default is made, the grant reverts to the Crown. Mines may be leased for a term of ten years, with right of renewal for a further term of ten years, and with a right to a further



renewal of twenty years; the rent varies from \$1 an acre upwards. At any time during the lease the lessee may become the purchaser; in case of default in payment of rent, the leases become forfeited. A Bureau of Mines is established for the purpose of the better supervision of the mines of the province.

Bureau  
of Mines.

Provincial  
fisheries.

R. S. O.  
c. 32.

55 Vict.  
c. 10.

3. The Fisheries of the province are in like manner subject to the control of the Commissioner of Crown Lands. A fishery lease may be granted for five years, and can only be made after public competition. For trespass upon the rights of the lessee under a fishery lease, fine and imprisonment may be awarded. The public user of any waters cannot be interfered with. Fishery overseers may be appointed, who are ex officio justices of the peace. Guardians may be appointed so that the rights of leaseholders may not be interfered with. Fishing permits may be issued for any period not exceeding one month. Lessees have the right of action for trespass on their rights, and are answerable for damage done by them. Waters in which Indians shall be allowed to catch fish may be set apart for their use. Waters for the natural or artificial propagation of fish may also be set apart. Any information for breach of the fisheries regulations must be laid within two months after the offence. Tourists or summer visitors are placed under special restrictions, and a "close season" is rigorously enforced. The destruction of fish by explosives is prohibited under severe penalties.

Provincial  
public  
works.

R. S. O.  
c. 33.

4. The Public Works of Ontario are under the supervision of a Commissioner of Public Works, with the necessary officers of the Public Works Department. The commissioner oversees the construction, maintenance and repair of all public works of the province; he must invite tenders for the construction of all such works, except in cases of pressing necessity. Security must be taken for the due performance of any work let by contract. Whatever lands may be necessary for any purpose relative to the works under the control of the department may be taken by the commissioner. In case the owner of land is under disability and has no representative, the commissioner may take possession of the

land without notice or tender of compensation; if the owner of the land is an infant and has no guardian, the County Court Judge or such person as a Judge of the High Court may direct must, on the petition of the commissioner, represent the interest of the infant. If any resistance or forcible opposition is offered to possession being taken, the County Court Judge may issue his certificate to the sheriff to put the commissioner in possession of the land. If a person is entitled to compensation and is dissatisfied, the board of official arbitrators of the department will settle the amount of compensation. The amount may be paid into Court where the party to receive it cannot give a clear conveyance. If the owner or occupier refuses or fails to agree to convey the possession or interest, the commissioner may tender what he considers a reasonable offer, and in every case, whether by agreement or after tender of notice, authorize possession to be taken. The commissioner may employ the necessary assistance to drain any land, and to make contracts for the carrying out of the work. If any person has a claim for real or personal property taken or for damages arising from the public work, he may give notice in writing of his claim to the commissioner; the commissioner may at any time within thirty days after notice assess what he considers the just satisfaction, with notice that unless the sum tendered is accepted in ten days, the claim will be submitted to arbitration. The claim for compensation must have been filed within six months after the loss or injury, or after the date of the final estimate made to the contrary. The Board of Arbitrators have the power of summoning witnesses and of taking evidence; they must consider the advantage as well as the disadvantage of any public work, and take into consideration the advantages accrued or likely to accrue, as well as the damage occasioned by reason of any work. If the sum awarded is greater than the sum tendered, the commissioner must pay the costs of the arbitration; if less, the costs must be paid by the person who refused the tender. In other cases, where the award is in favor of the claimant, they must be paid by the commissioner, in addition to the

Expropriation of lands.

Wages of  
employees.

sum awarded, and where the award is in favor of the commissioner, must be paid by the claimant. The wages of employees of contractors on public works are secured to them. The commissioner is empowered to reserve part of the contract price to cover employees' claims.

Preserv-  
tion of  
peace near  
public  
works.  
R. S. O.  
c. 34.

For the preservation of the peace and for the protection of the public in the neighborhood of public works, where large bodies of laborers are congregated and employed, the Lieutenant-Governor may by proclamation declare that the Act respecting riots near public works shall be enforced; all weapons must then be given up before owners to a justice of the peace. Every weapon not given up is liable to be seized; any person keeping or concealing weapons may be fined not less than \$40 nor more than \$100. Justices of the peace may issue search warrants where necessary. No intoxicating liquors can be sold within three miles of the line of any railway, canal or public work in process of construction; offenders are liable to a fine of \$20 on the first conviction, \$40 on the second conviction, and on the third and every subsequent conviction, a fine of \$40 and imprisonment for not more than six months. If three persons who are voters, or entitled to vote at any municipal election, make oath and affirm that they have reason to believe that liquor is being sold or kept within the above limit, search warrants may be issued and the liquor, if found, destroyed. Payment for liquor sold under these circumstances is held to have been received without consideration and against law, equity and good conscience, and may be recovered.

Drainage  
works.

R. S. O.  
c. 36.

One of the principal duties of the Commissioner of Public Works is the supervision of drainage works. On the written application of the council of any municipality, or on the petition of all the owners, or of a majority of the owners, the Commissioner of Public Works may undertake and complete drainage within a municipality; if necessary, the works may be continued into an adjoining municipality. The lands benefited by the drainage are valued by the assessors, or, in default of the appointment of assessors, by the official arbitra-

tors. The cost of the work is charged upon the property benefited. A Court of Revision may be held for the hearing of complaints against assessment; these complaints are adjusted in the same way as under the Assessment Act. Disputes between different municipalities are settled by arbitration on the same principle as under the Municipal Act. The assessment is the first charge on the land. All disputes are settled either by arbitrators specially appointed, or by the official arbitrators. Every township municipality which has undertaken drainage works under the Municipal Act may deposit with the Provincial Treasurer copies of the by-law, and may apply for a sale of the debentures authorized under the by-law. The treasurer must report to the Lieutenant-Governor as to the advisability of taking the investment. No investment in debentures can be made where the debentures to be issued exceed \$30,000; no larger amount than \$20,000 can be made at one time in the debentures of any one municipality. Any surplus of the Consolidated Revenue Fund, not exceeding at any one time \$350,000, may be set apart for the purpose of such debentures. The amount payable in any year for principal and interest on the debentures must be sent to the treasurer of the province within one month after maturity; in case of default, the council of the municipality must, in the next year, assess and levy on the whole ratable property a sufficient sum to enable the treasurer of the municipality to pay over to the treasurer of the province the amount in arrear, together with interest at seven per cent. for the default. No municipal treasurer can pay any sum, except for ordinary current disbursements and salaries of employees of the municipality, until the treasurer of the province has been paid the arrears. In like manner the council of every town, village or township may pass by-laws for borrowing not less than \$2,000 nor more than \$10,000 for tile, stone and timber drainage; the total amount of the indebtedness of the municipality in this respect cannot exceed the sum of \$10,000. The Lieutenant-Governor may invest any surplus of the Consolidated Revenue Fund, not exceeding at any one time the sum of \$200,000, in the

R. S. O.  
c. 37.Municipal  
drainage  
debentures

purchase of these debentures. The council can lend the money so borrowed only for the purpose of tile, stone, or timber drainage, for the term of twenty years in sums of one or more hundreds of dollars, and to persons who are assessed as owners. No more than \$1,000 can be lent to any one person; nor can the total rate for all purposes exceed three cents in the dollar on the value of the land to be drained. An inspector of drainage must be appointed. On default of payment in these debentures the same results follow as in default of payment of ordinary drainage debentures.

Escheats.  
R. S. O.  
c. 95.

5. Escheats. Where lands, tenements, or hereditaments have escheated to the Crown by reason of the person who was last seized having died intestate and without lawful heirs, or if they have become forfeited for any cause except crime, the Attorney-General of Ontario takes possession for the Province; if possession is withheld, he causes an action to be brought for their recovery, and the proceedings in this action are in all respects the same as those in other actions for the recovery of land. The Lieutenant-Governor may make any grant for escheated or forfeited lands, for the purpose of transferring or restoring them to any person who had any legal or moral claim upon the person to whom the lands had belonged; or of carrying into effect any disposition which that person may have intended; or of rewarding any person who makes discovery of the escheat or forfeiture. No actual entry or inquisition is necessary, and, if possession is withheld, the person to whom the grant is made may commence proceedings for the recovery of the lands. The Lieutenant-Governor has also the right of waiver or of releasing any right of escheat or forfeiture which the Crown may have become entitled to. Personal property to which the Crown is entitled through intestacy or forfeiture, may also be assigned by the Lieutenant-Governor in the same way for the same purposes as he may assign real property.

Bonds to  
Crown.

6. Bonds or covenants made to the Crown bind only such property as they would have bound had they been made between subject and subject. The property on

any title to the Crown is only bound to the same extent <sup>R. S. O. c. 94.</sup> and in the same manner as where a debt is due from one subject to another.

7. Ferries. Under the Provincial Act relating to Provincial Ferries, grants must be issued by the Lieutenant-Governor under the Great Seal, after competition by advertisement. No right of ferry can last longer than seven <sup>R. S. O. c. 117.</sup> years. The limit of extent is one mile and a half on each side of the point where the ferry is usually kept. Licenses may be granted to municipalities where the two sides of the ferry are in different counties. In all such cases the accommodation must be provided for by steam ferry. Private persons are allowed to keep their boats at a ferry, but must not employ these boats for gain. Interference with ferriage rights is punishable by fine.

8. Estreats. All fines, issues, amerciaments and <sup>Estreats.</sup> forfeited recognizances, imposed by or before the High <sup>R. S. O. c. 88.</sup> Court of Justice, any Court of Oyer and Terminer or General Gaol Delivery, or before any Court of Assize, must, within twenty-one days after the adjournment of the Court, be entered on a roll by the deputy clerk of the Crown or clerk of assize. One roll is then transmitted by the clerk to the registrar of the Queen's Bench Division of the High Court; the other, with a writ of execution and capias, to the sheriff of the county for which the Court was held. This writ, if unexecuted, remains in force for one year and no longer. The writ is an authority to the sheriff to proceed to levy the fine on the goods or lands of the persons named in the writ, or for taking into custody the persons themselves, if sufficient goods or lands cannot be found out of which the required sums can be made. In the same way fines incurred at General Sessions are, within twenty-one days after the adjournment of the Court, entered on a roll by the clerk of the peace. One roll is deposited in his office, and the other is sent to the sheriff. Except in cases of persons bound by recognizance for their appearance to prosecute or give evidence, in case of default whereby a recognizance has become forfeited, if the



cause of absence is made known to the Court in which the party was bound to appear, the Court may forbear to order the recognizance to be estreated. In all cases of fines imposed for the non-attendance of a juror or constable, or public officer bound to attend at the Court, the Judge may, in like manner, make an order that any sum forfeited or fine imposed shall not be levied. For this purpose the clerk, before sending to the sheriff the roll with the writ of execution and *capias*, as above mentioned, must submit the roll to the Judge. The latter may thereupon make a minute of the persons against whom no proceedings are to be taken. These persons will then be free from the operation of the proceeding. On any writ issued by the sheriff against lands, under the authority of an *estreat*, he must advertise the lands in the same manner as any execution in other cases. No sale can take place in less than twelve months from the time the writ comes to the hands of the sheriff. A person who is arrested by the sheriff may give security for his appearance, and in that case the sheriff may discharge the person out of custody. If he does not appear in pursuance of his undertaking, the Court may then issue a writ of execution and *capias* against the surety of the person bound. The sheriff to whom any writ is directed under the Act must on his return state on the back of the writ what he has done in execution of the writ; a copy of the writ and return is then transmitted to the treasurer of the province, and all moneys are paid over to him.

Fines and  
penalties.

R. S. O.  
c. 89.

9. Fines and Penalties. In cases where, by the law of England, any portion of a fine is payable for the support of the poor, or to any parochial or other purpose inapplicable to Ontario, then the fine or penalty, or the part thus appropriated, must be paid to the treasurer of the county or city where the conviction has taken place. Every other fine or penalty, and the proceeds of every forfeiture imposed or given to the Crown, must, if no other provision is made for it, be paid to the treasurer of the province and form part of the Consolidated Revenue Fund; in like manner, as above stated, by Dominion legislation,



whenever no other provision is made by the law of Canada for the appropriation of any fine, penalty or forfeiture, it belongs to the Crown for the public uses of Canada, and forms part of the Consolidated Revenue Fund of Canada.

All penalties or fines may be remitted by a Court or Judge having cognizance of the proceedings. They may also be remitted by the Lieutenant-Governor in council, unless they are imposed by the Act respecting the Legislative Assembly, or by some Act respecting elections of members of the Legislative Assembly.

Remission  
of fines or  
penalties.

R. S. O.  
c. 90.

10. Succession Duties. An Act has been passed to provide for the payment of succession duties on the transmission of estates. The reason given for the raising of the duty is, that inasmuch as the province expends very large sums annually for asylums for the insane and idiots, and for institutions for the blind, and for deaf mutes, and towards the support of hospitals and other charities, some part of these large expenditures should be defrayed. It has therefore been laid down that all property situate within Ontario, whether the deceased person owning it or entitled to it was domiciled in Ontario at the time of his death or not, is liable to succession duty on passing on the death of the owner. In order to prevent attempted evasions the following classes of property are specified as subject to the Act :

Succession  
duties.

55 Vict.  
c. 6.

(1) All property situate in the province and any interest therein or income therefrom, no matter where the deceased owner was domiciled. If property is brought into the province to be administered it becomes liable to legacy duty here, less any foreign duty already paid.

(2) All property transferred in contemplation of death of owner.

(3) Any "donatio mortis causa" or any other gift which shall not have been bona fide made twelve months before the death of the deceased, and also of which possession of which has been bona fide taken and retained by the donee.

(4) Any property vested in the donor himself and also some other person, so that the beneficial ownership passes on the owner's death to that other person.

(5) Any property passing by settlement, whether made for valuable consideration or not.

(6) Any annuity purchased or provided by a deceased person to the extent of the beneficial interest accruing or arising in any way on the death of the deceased.

An estate, the value of which, after payment of all debts and expenses of administration, does not exceed \$10,000, is not liable to this duty; nor is (2) property given, devised or bequeathed for religious, charitable, or educational purposes; nor is (3) property passing under a will, intestacy or otherwise for the benefit of a father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property does not exceed \$100,000. The succession duty which is charged is over and above the fees provided by the Surrogate Courts Act. The rates fixed by the statute are as follows :

59 Vict.  
c. 5.

(1) When the property exceeds \$100,000 and goes to or for the benefit of father, mother, husband, wife, child, grandchild, or other lineal descendant, daughter-in-law or son-in-law, \$2.50 for every \$100 of value.

(2) When such property is over \$200,000 the duty is \$5 for every \$100 of value.

(3) When the value of the property exceeds \$10,000 whatever amount over that sum passes to the grandfather or grandmother or any other lineal ancestor of the deceased, except the father and mother, or to any brother or sister of the deceased or their descendants, or to an uncle or aunt of the deceased or their descendants, \$5 for every \$100.

(4) Where the property is over \$10,000 and goes to persons other than those just mentioned, the duty is \$10 for every \$100.

(5) If the whole property is under \$200 then it is exempt from duty. If an executor, in order to escape

legacy duty in Ontario, distributes the property outside of the province he becomes personally liable for whatever the province lost.

This enactment has thrown upon executors and administrators special obligations. Before the issue of letters probate or administration, an executor or administrator must make and file with the surrogate registrar a statement under oath, showing (a) a full, itemized inventory of all the property of the deceased person and its market value; (b) the several persons to whom it will pass under the will or intestacy, and the degree of relationship in which they stand to the deceased. The executor or administrator must also, before the issue of letters probate or administration, deliver to the surrogate registrar a bond in a penal sum equal to ten per cent. of the sworn value of the property liable to succession duty, executed by himself and two sureties, to secure the due payment of any duty to which the property may be found liable. If the treasurer of the province is not satisfied with the value thus sworn to, the surrogate registrar of the county must, at the instance of the Provincial Treasurer, direct in writing that the sheriff of the county must make a valuation and appraise the property. The sheriff must thereupon, on notice to the executors and administrators, appraise the estate at its fair market value, and report to the surrogate registrar, who must, on receiving the sheriff's report, assess in his turn the cash value of the estate and the duty to which it is liable. There is an appeal to the Surrogate Judge of the county from the appraisement by the registrar. If the estate exceeds in value \$10,000, a further appeal lies to a Judge of the High Court and from him to the Court of Appeal. Where there has been a devise or bequest, or descent of property liable to succession duty which takes effect on some future event, the duty is not payable, nor does interest begin to run upon it until the time of the actual possession of the estate. The duty is assessed upon the value of the estate when the right of possession accrues. Except as above, duties are payable at the death of the deceased, or within eighteen months afterwards. If paid within eighteen months no interest

Statements  
required  
from exe-  
cutors and  
adminis-  
trators.

Time for  
payment  
of duties.

is charged upon the duty; but, if not so paid, interest at the rate of six per cent. must be paid, and the duties, with the interest, remain a lien upon the property. An order may be obtained from the Surrogate Judge for the extension of time for the payment of the duty. An administrator or executor must deduct from any legacy the amount of duty before payment over to the person who is entitled. Executors have a power of sale over so much of the property of the deceased as will enable them to pay this succession duty. The person to receive the money is the Treasurer of the province. When debts are proved against the estate of a person after the payment of legacies, or a distribution of the property from which a debt has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, the Treasurer will refund the duty paid to him. The Surrogate Judge must, if it appears to him that any duty accruing under the Act has not been paid, order the persons liable to pay to appear before the Court, in order to enforce payment. Property under the Act includes real and personal property of every description, and every estate or interest capable of being devised or bequeathed by will, or passing, on the death of the owner, to his heirs or personal representatives. If executors or administrators divide an estate outside of the province in order to escape payment of the provincial duty, they become personally liable to the province. Any action against the province for succession duties or other claims must be brought within six years from the date of the succession.

I have thus said as much as space will allow concerning the King, the first constituent in the legislative branch of the Government, and in his own person or by his representatives in the Dominion and Province, the Executive Branch. The enquiry has led me into an extensive investigation into the mode of conducting the business of both Dominion and Province.\* I have also

\* I would now recommend the reader to take up the last Annual Balance Sheets of the Dominion and the Province respectively. Several items in both are not mentioned by me, but enough has been stated to explain the main items. The revenue side in both accounts should be particularly studied.

taken a brief view of the law relating to the raising of the public revenue and of providing for the public expenditures, and now,

2. Next to the King and his representatives, the Governor-General and Lieutenant-Governor, the Senate presents itself for consideration. That body is at present composed of eighty-one members, who are summoned by the Governor-General. The number of Senators was originally seventy-two. In relation to the constitution of the Senate, Canada was divided into three divisions—Ontario, Quebec, and the Maritime Provinces. Each division was represented by twenty-four Senators—Nova Scotia and New Brunswick sending twelve each. The maximum number of Senators was to be seventy-eight. In case of the admission into Confederation of Newfoundland and Prince Edward Island each was to be entitled to four members. If Newfoundland was admitted, the normal number of Senators was to be seventy-six and the maximum number eighty-two. Prince Edward Island, when admitted, was to be deemed to be included in the third division above mentioned. Then, Nova Scotia and New Brunswick would be reduced from twelve to ten. When Manitoba and British Columbia were admitted they were given representation in the Senate. Imperial legislation was obtained in 1886 ratifying these measures, which were really not justified by the B. N. A. Act. The North-West Territories have also received representation in the Senate, and the present number of Senators is eighty-one, distributed as follows: Ontario, 24; Quebec, 24; Nova Scotia, 10; New Brunswick, 10; P. E. Island, 4; Manitoba, 4; British Columbia, 3; Territories, 2, with promise of a third. A power has been reserved to the Governor-General of recommending the appointment of three or six additional Senators, one or two from each division. So far it has never been exercised. It is greatly to be hoped that the four representatives from Newfoundland will before long take the places reserved for them as Senators of Canada. To be a Senator a person must have the following qualifications: He must be thirty years of age; he must be a British subject by

The  
Senate.

B. N. A.  
Act, secs.  
24, 32, 23.

birth or naturalization; he must own lands within his province to the amount of four thousand dollars, over and above encumbrances; his real and personal property must be together worth four thousand dollars over and above his debts; he must reside in the province for which he is appointed; in the Province of Quebec he must have his real property in the electoral division for which he is appointed, or must reside in that division.

*Ibid.* 29,  
30, 31.

A Senator holds his place in the Senate for life, but he may resign his seat or he may lose it by non-attendance, loss of qualification, or other causes. A Senator cannot

*Ibid.* 39.

sit in the House of Commons, nor can he become a contractor with the Government and retain his seat. A

R. S. C. 1  
c. 11, s. 18.

quorum of fifteen, including the Speaker, is necessary to constitute a meeting of the Senate for the exercise of its powers. Questions are decided by a majority of

B. N. A.  
Act, secs.  
28, 35, 36.

votes, and the Speaker has a vote in all cases. When the votes are equal the decision is in the negative.

House of  
Commons.

3. The House of Commons. We now come to the third constituent branch of Parliament in the Dominion, the House of Commons, the second in the province, the Legislative Assembly.

Legisla-  
tive  
Assembly.

The Commons consist of all inhabitants of the Dominion, every one of whom has a voice in Parliament, either personally, or by his representatives. The Legislative Assembly of Ontario represents all the residents of that province. In a free state, every man who is supposed a free agent ought to be in some measure his own governor; and therefore such a branch, at least of the legislative power, should reside in the whole body of the people; and this power, when the territories of the state are small, and its citizens easily known, should be exercised by the people in their aggregate or collective capacity. But this will be highly inconvenient when the public territory is extended to any considerable degree, and the number of citizens is increased. In so large a state as ours it is, therefore, very wisely contrived that the people should do that by their representatives, chosen by a number of separate districts, wherein all the voters are, or easily may be distinguished. With national progress representation in-

Prince  
Nova S  
New B  
Quebec  
Ontario  
Manito  
British  
Territor

Prince E  
Nova S  
New Bru  
Quebec  
Ontario  
Manitoba  
British C  
Territor

creases. Thus with the Canadian House of Commons. *B. N. A. Act, s. 37.*  
 It at first consisted of one hundred and eighty-one members. It now consists of two hundred and fifteen members, of whom ninety-two are from Ontario. *Ibid. s. 48.*  
 Twenty members constitute a quorum of the House. No property qualification is necessary for a man in order to become a member of Parliament. The Legislative Assembly of Ontario at first consisted of eighty-two members. *R. S. O. c. 11, s. 1.*  
 It now consists of ninety-four members. *52 Vict. c. 2, s. 4.*

The basis of representation in the House of Commons is laid down by the B. N. A. Act as follows—the original number of members was, as stated, one hundred and eighty-one: Ontario, 81; Quebec, 65; Nova Scotia, 19; New Brunswick, 19. A re-adjustment of seats was then provided for, dependent on the results of the decennial census of the Dominion, taking Quebec as the unit with sixty-five members, and giving the other provinces a number of members proportionate to their population as compared with that of Quebec. The incorporation of other provinces and giving representation to the North-West Territories have changed the total, but Quebec still remains the governing factor, with sixty-five. The following are the numbers, based on the census returns and official Acts of Admission:

POPULATION.	1871.	1881.	1891.
Prince Edward Island.....	94,021	108,891	100,078
Nova Scotia.....	387,800	440,572	450,396
New Brunswick.....	285,594	321,233	321,263
Quebec.....	1,191,516	1,359,027	1,488,535
Ontario.....	1,626,851	1,926,222	2,114,321
Manitoba.....	18,995	62,260	152,506
British Columbia.....	36,247	49,455	98,173
Territories.....	Unknown.	56,446	98,967
Total.....	3,635,024	4,324,810	4,833,239

MEMBERS.	1871.	1881.	1891.
Prince Edward Island (Admitted 1st July, 1873).....	6	6	5
Nova Scotia.....	21	21	20
New Brunswick.....	16	16	14
Quebec.....	65	65	65
Ontario.....	88	92	92
Manitoba (Admitted 15th July, 1870).....	4	5	7
British Columbia (Admitted 20th July, 1871).....	6	6	6
Territories (Admitted 15th July, 1870).....	..	4	4
Total.....	206	215	213



The shifting of population and power is from East to West.

B. N. A.  
Act, secs.  
50, 85.

R. S. O.  
c. 11, s. 2.

The Dominion House of Commons continues for five years, and the Ontario Legislative Assembly four years from the day of the return of the writs for their respective elections.

The Legislative Assembly of the province is composed of ninety-four members, to represent ninety-three electoral districts. No Legislative Assembly is dissolved by the demise of the Crown, but must continue, and may meet in the same manner as if the demise had not happened. Every Legislative Assembly may continue for four years from the fifty-fifth day after the dates of the writs for election, and no longer. The Assembly may be dissolved by the Lieutenant-Governor at any time. If a general election is held at such time of the year that the elections for the Districts of Algoma West and Algoma East do not take place at the same time as the other elections, and if there is a meeting of the Legislature before the elections for those districts, the members-elect for the other electoral divisions, and the members elected for those two districts at the previous election, constitute a lawful Assembly; in that case, the old members for the two Districts of Algoma represent those districts until the new election has taken place, and the return received by the clerk of the Crown in Chancery. In this case, the duration of the new Assembly is four years from the day on which the Assembly was summoned to meet for the despatch of business.

B. N. A.  
Act, secs.  
20, 86.

There must be a session of Parliament and the Provincial Legislature respectively once at least in every year, so that twelve months shall not intervene between the last sitting of each body in one session and its first sitting in the next.

Member-  
ship in  
House of  
Commons.

As no property qualification is required, the chief matter to consider is that of disqualification. Subject, however, to the disqualifications to be next mentioned.

every subject of the realm is eligible of common right: though there are instances wherein persons in particular circumstances have forfeited that common right, and have been declared ineligible for that Parliament by a vote of the House of Commons, or for ever, by an Act of the Legislature. But it was an unconstitutional prohibition which was grounded on an ordinance of the House of Lords and inserted in the King's writs for the Parliament holden at Coventry, 6 Hen. IV., that no apprentice or other man of the law should be elected knight of the shire therein: in return for which our law books and historians have branded this Parliament with the name of "Parliamentum indoctum," or the lack-learning Parliament; and Sir Edward Coke observes, with some spleen, that there was never a good law made thereat.

Lack-learning Parliament.

For the Dominion representation the following persons are not eligible for election as members of the House of Commons, nor can they sit or vote in it: (a) Any person accepting or holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada at the nomination of the Crown, or at the nomination of any of the officers of the Government of Canada to which any emolument of any kind is attached. (b) Sheriffs, registrars of deeds, clerks of the peace, and county Crown attorneys in any of the provinces of Canada are also excluded. Persons who hold any of the Crown offices of state in the Dominion may be eligible as members of the House of Commons. Should any person holding one of these offices, which entitles him to be a Minister of the Crown, being at the same time a member of the House of Commons, resign his seat and within one month after his resignation accept any of the other offices, he does not vacate his seat unless the Administration of which he was a member has resigned and a new Administration has been formed and has occupied these offices. If any member of the House of Commons accepts any office or commission, or is interested in any contract or agreement with the Government of Canada on behalf of the Crown, or any of the offices of the Government of Canada for which any

Disqualifications for membership in House of Commons.

R. S. C. c. 11.

public money of Canada is to be paid, his seat is vacated and his election becomes null and void. If a person so disqualified remains sitting in the House of Commons, he forfeits the sum of \$200 for every day on which he sits or votes. In every contract, agreement or commission, entered into or accepted by any person with the Government of Canada, there must be inserted a condition that no member of the House of Commons shall be admitted to share in the profits of the contract. Any person who accepts a contract admitting any member of the House of Commons to any share in it, or in any way so as to receive a benefit thereby, is liable to a fine of \$2,000. No member of the Provincial Legislature is eligible as a member of the House of Commons. If any member should be elected to any Legislative Assembly, his seat is vacated. Any person who sits in the House of Commons after being ineligible in this manner, is liable to a fine of \$2,000 for every day he sits or votes.

R. S. C.  
c. 13.

Disquali-  
fication for  
member-  
ship in Le-  
gisla-  
tive  
Assembly.

R. S. O.  
c. 11.

See  
B. N. A.  
Act, s. 83.

In the Province of Ontario no Senator, and no Provincial Councillor of the Dominion, who is a member of the House of Commons, can be eligible as a member of the Legislative Assembly. No person accepting or holding any office, commission or employment in the service of the province at the nomination of the Crown or of the Lieutenant-Governor, to which a salary or any fee, allowance or emolument in lieu of salary, is attached; or accepting or holding any office, commission or employment of profit at the nomination of the Crown, or of the Governor, or of any head of the department in the Government of Ontario, whether the profit is, or is not, payable out of the public funds, can be a member of the Legislative Assembly; but any person may be a member of the Executive Council, or hold any of the following offices, namely: Attorney-General, Secretary and Registrar of the Province, Treasurer, Commissioner of Crown Lands, Minister of Agriculture, Commissioner of Public Works or Minister of Education, and if elected, may sit and vote as a member. There is no disqualification of officers of the army or navy, or militia, or of excise officer, coroner or notary public, or of any person who holds the office of a Division Court clerk.

or the Judge of a County Court. On the 5th of March, 1880, the appointment of these last mentioned officers was transferred to the Government, and those appointed since that date are ineligible. No person who has any contract with respect to the public service of Ontario, either directly or indirectly in any way, can be a member. Sureties for sheriffs, registrars, county attorneys, clerks and bailiffs of the Division Court, or other public officers, or for the payment of the maintenance of a patient at a public asylum for the insane, are not disqualified on that account. Should any person who is disqualified or incapable of being elected a member be elected, the return is null and void. If a member of the Executive Council resigns his office, and within one month after his resignation accepts another office in the Council, he does not vacate his seat unless the Administration of which he was a member has resigned and a new Administration occupies the office. If a member of the Executive Council is appointed to hold another office in addition to or in connection with his first office, he does not thereby vacate his seat.

No person who is disqualified can sit or vote, and if he does he forfeits the sum of \$2,000 for every day on which he does so.

I have thus dealt with the two first points relating to the constitution of Parliament.\* We are next to examine the laws and customs relating to Parliament, united together, and considered as one aggregate body.

Power and jurisdiction of Parliament.

The power and jurisdiction of Parliament, says Sir Edward Coke, are so transcendant and absolute, that it cannot be confined, either for causes or persons, within any bounds. And of this high Court, he adds, it may be truly said, "*si antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima.*" It has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving . . . compounding of laws, concerning matters of all possible denominations, ecclesiastical, or temporal, civil, maritime, military or criminal; this being the place where that absolute despotic power, which must in all governments reside

\* See p. 53 *ante*.

somewhere, is entrusted by the constitution of England. All mischiefs and grievances, operations, and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new model the succession to the Crown, as was done in the reigns of Henry VIII. and William III. It can alter the established religion of the land, as was done in a variety of instances, in the reigns of King Henry VIII. and his three children. It can change and create afresh even the constitution of the Kingdom and of Parliaments themselves, as was done by the Acts of Union and the several statutes for triennial and septennial elections. It can, in short, do everything that is not naturally impossible, and, therefore, some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament does, no authority upon earth can undo. So that it is a matter most essential to the liberties of Canada, that such members be delegated to this important trust as are most eminent for their probity, their fortitude and their knowledge; for it was a well-known apophthegm of the great Lord Treasurer Burleigh, "that England could never be ruined but by a Parliament"; and, as Sir Matthew Hale observes, this being the highest and greatest Court, over which none other can have jurisdiction in the kingdom, if by any means a misgovernment should any way fall upon it, the subjects of this kingdom are left without all manner of remedy. To the same purpose the President Montesquieu, though, I trust, too hastily, presages that as Rome, Sparta and Carthage have lost their liberty and perished, so the constitution of England will in time lose its liberty, will perish: it will perish whenever the legislative power shall become more corrupt than the executive. In the same way that every Court of justice has laws and customs for its direction, so the High Court of Parliament has its own peculiar law, called the "*lex et consuetudo parliamenti*," a law which, Sir Edward Coke observes, is "*ab omnibus quaerenda, a multis ignorata a paucis cognita*." It will be sufficient for our purpose to observe that the whole

Law and  
custom of  
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of the law and custom of Parliament has its original from this one maxim, "that whatever matter arises, concerning either House of Parliament, ought to be examined, discussed and adjudged in that House to which it relates, and not elsewhere."

The privileges of Parliament are very extensive. The principal are privileges of speech and of person.

As to the first, privilege of speech, it is declared by the statute 1 W. & M., st. 2, c. 3, as one of the liberties of the people, "that the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any Court or place out of Parliament." And this freedom of speech is particularly demanded of the King in person, by the Speaker of the House of Commons, at the opening of every new Parliament. So, likewise, is the other privilege, of person, which is an immunity as ancient as Edward the Confessor, in whose laws we find this precept: "Ad synodos venientibus, sive summoniti sint, sive per se quid agendum haberint, sit summa pax." This included, formerly, not only privilege from illegal violence, but also from legal arrests and seizures by process from the Courts of law; and still to assault by violence a member of either House, or his menial servants, is a high contempt of Parliament, and there punished with the utmost severity. It has, likewise, peculiar penalties annexed to it in the Courts of law by the statutes 5 Hen. IV. c. 6, and 11 Hen. VI. c. 11. Neither can any member of either House be arrested and taken into custody unless for some indictable offence, without a breach of the privilege of Parliament.

The privileges and immunities of members of both the Senate and House of Commons are such as from time to time are defined by Act of the Dominion Parliament.\* These privileges are a part of the general

\* The B. N. A. Act originally confined the privileges and immunities of members of the Senate and House of Commons to those possessed by members of the Imperial House of Commons at the time of the Union. This restriction was removed by amendment to the B. N. A. Act 38 & 39 Vict. c. 38 (Imperial Act). This Act conferred the right to the extent mentioned in the text, but at no time can the privileges and immunities of the Canadian Senate and House of Commons exceed those enjoyed by members of the Imperial House of Commons.



R. S. C.  
c. 11.

See  
B. N. A.  
Act, secs.  
44 to 49.

law of Canada, and must be judicially noticed by all Courts. They were formerly somewhat indefinite, but Acts have been passed by both Dominion and province to define more accurately the privileges and immunities of members, to secure the independence of Parliament and to prevent the receiving of bribes by members.

Resignation  
of  
members  
of House of  
Commons.

Members of the House of Commons may resign their seat by giving notice of intention in the House; notice may also be given to the Speaker; or, if there be no Speaker, any two members of the House. If a vacancy happens in the House of Commons the Speaker must address his warrant to the Clerk of the Crown in Chancery for the issue of a new writ; if there is no Speaker any two members of the House may issue the warrant. The Speaker and four members of the King's Privy Council for Canada act as commissioners for the supervision of the internal economy of the House. A deputy Speaker may be appointed in the unavoidable absence of the Speaker on any day. When the House is informed by the clerk at the table of the unavoidable absence of the Speaker, the Deputy Speaker, if present, must take the chair.

R. S. C.  
c. 14.

Rights of  
Legislative  
Assembly.

R. S. O.  
c. 11.

The rights of members of the Legislative Assembly as declared by statute of the province are: (1) Freedom of speech. (2) Freedom from arrest in civil actions. (3) Freedom from serving as jurors. The two latter rights are confined to the period of the session and twenty days before and after.

The prohibitions laid on members are: (1) They are not allowed to accept or receive, either directly or indirectly, any fee, compensation or reward in any manner connected with the preparation or proposal of any measure before the House. This prohibition extends to any barrister or solicitor who is a partner of a member. (2) They shall not be guilty of corrupt practices, as explained later on, when we come to consider the election law. Any violation of the first prohibition causes the seat of the offender to be vacated, as if he were naturally dead. The House has the rights and privileges of a Court of Record to punish breaches of privilege or contempt of Court in many matters. They



are enumerated as follows : (1) Assaults upon members. (2) Intimidation. (3) Bribery or attempting to bribe. (4) Interference with officers of the Assembly. (5) Tampering with witnesses before the Assembly. (6) Giving false evidence before it. (7) Disobedience to summonses to appear before it. (8) Presenting false documents. (9) Falsifying records of the House. (10) Bringing any civil action against a member, or (11) Arresting him in a civil action. In all these cases the offender may be punished by the House by imprisonment during the session in which the offence is committed, besides any other penalty or punishment to which he is liable in law. There is no appeal from a judgment of the House in these cases.

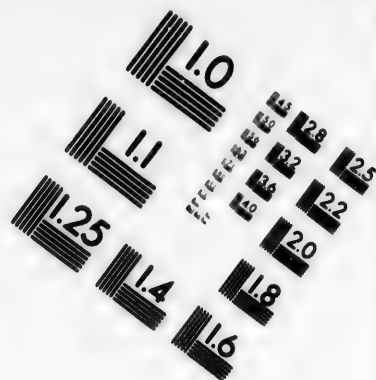
All reports of proceedings or votes ordered by the House to be printed are protected. No man who prints or publishes them can be made liable to any action or prosecution for anything contained in them. If sued on account of anything connected with them, the production of the order of the House directing their publication is a complete defence.

Protection  
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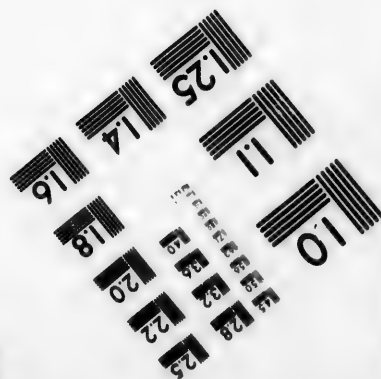
The Legislative Assembly may at all times command and compel the attendance before the Assembly, or before any committee, of any person and all papers or things considered necessary. The Speaker may issue his warrant or subpoena, requiring the attendance of any person, and ordering the production of anything that may be required. No person is liable in damages or otherwise for any act done under the authority of the Legislative Assembly and within its legal power, or under or by virtue of any warrant issued under its authority, and this warrant may command the aid and assistance of all sheriffs, bailiffs, constables and others, and every high Court may administer the oath as required. Members are entitled to a sessional indemnity, being \$6 for each day's discussion, if the session does not extend beyond thirty days; if the session does extend beyond thirty days, then a sessional allowance of such a sum as may from time to time be appropriated for that purpose.\*

Warrants  
of the  
House.

\* Sessional indemnities are also paid to members of the Senate and House of Commons. R. S. C. c. 11, s. 25.



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Independence of members of Legislative Assembly.

R. S. O.  
c. 11.

Resignation.

See as to disclaimer of a seat, 58 Vict. c. 4, secs. 6 to 12.

Before a member is permitted to take the oath as such, he must file with the clerk of the House an affidavit, duly sworn before the clerk, that except in respect of his personal expenses, he has not made before, or during, or after the election, any payment, advance, loan, or deposit, for the purpose of the election, otherwise than through his agent or agents, and that he will not make any such advance. A member of the Legislative Assembly may resign his seat before the first meeting of the Assembly after his election. He may address to any two members-elect of the Assembly a declaration of his intention, made in writing under his hand and seal before two witnesses. These two members, on receiving the declaration, must address their warrant, under their hands and seals, to the clerk of the Crown in Chancery for the issue of a new writ for the election of a member in the place of the member resigning, and the writ must be issued accordingly. The clerk of the House is ex officio clerk of the Crown in Chancery. No seat can be resigned while the election is being lawfully contested, nor until after the expiration of twenty-one days from the date of the return to the clerk of the Crown in Chancery. When an election is declared void the Speaker or clerk issues his warrant for an election to fill the vacancy. No writ can be issued under the foregoing circumstances during the session of the Legislative Assembly. A member may also resign his seat by giving in his place notice of his intention to resign; the notice must be entered by the clerk on the journals of the Assembly, and the Speaker then must issue a warrant to the clerk of the Crown in Chancery for the issue of a new writ. A member may also give notice in writing to the Speaker of his intention to resign; his declaration being under his hand and seal, before two witnesses, and the Speaker, on receiving that declaration, may address his warrant to the clerk of the Crown in Chancery for the issue of a new writ. If a vacancy happens by the death of a member, or by his accepting any office, commission or employment, or by his becoming a party to any contract with the province, the Speaker, on being informed of the vacancy by a member of the Assembly, or by notice in writing under the hands and seals of two members, acts as above mentioned when an election is declared void.

The first step taken by Parliament or by the Legislative Assembly, on their first assembling after a general election, is to elect one of their members to be Speaker. Election of Speaker. See B. N. A. Act, s. 87, referring to secs. 44 to 49. The Speaker must preside at all meetings of the House. In case of the absence of a Speaker for a period of forty-eight consecutive hours, the House may take another of its members to act as Speaker. Should the Speaker find it necessary, from illness or other cause, to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and act as Speaker during the remainder of the day; unless the Speaker himself resumes the chair before the close of the sittings for that day. The member so called upon must take the chair and act as Speaker. Whenever a Speaker from illness cannot be present at the meeting of the Assembly on any day, then in the House of Commons the Deputy Speaker takes his place. In the Provincial House in such case the Assembly may elect a member to take the chair and proceed as Speaker for that day. All Acts passed, and everything done while such member is in the chair, is valid as if done while the Speaker himself was presiding. Twenty members inclusive of the Speaker form a quorum. Questions are decided by a majority of the votes. The Speaker has only a casting vote. R. S. C. c. 14. R. S. O. c. 11.

Next, with regard to the elections of members of the Legislatures of the Dominion and Provinces, we may observe that herein consists the exercise of the democratical part of our constitution: for in a democracy there can be no exercise of sovereignty but by suffrage, which is the declaration of the people's will. In all democracies, therefore, it is of the utmost importance to regulate by whom, and in what manner, the suffrages are to be given. In Canada, where the people do not debate in a collective body, but by representation, the exercise of this sovereignty consists in the choice of representatives. The laws have, therefore, very strictly guarded against usurpation or abuse of this power by many salutary provisions; which may be reduced to these points: 1. Electoral districts. 2. The qualifications of the electors. 3. The proceedings at elections. 4. Proceedings when elections are contested. Elections of members.

I shall consider this subject by first discussing representation for provincial purposes, that is, in the Legislative Assembly. I shall then describe the representation for Dominion purposes in the House of Commons for Canada. Every inhabitant of Ontario must understand both systems.

Electoral districts.

R. S. O.  
c. 7.

First, of electoral districts. For the purpose of the election of members to serve in the Legislative Assembly the province is divided into ninety-three electoral districts; these electoral districts are, generally speaking, the counties as defined in the Act respecting Territorial Divisions. Some counties have boundaries for electoral purposes which do not correspond with their boundaries for territorial purposes, but as this difference has been made for political reasons only, it it has no permanent significance. Cities entitled to elect a member are not, for the purpose of representation in the Legislative Assembly, deemed to form part of the counties wherein they lie.\* Every town or incorporated village lying within the boundaries of two or more ridings of a county, and not expressly included within some electoral district, belongs to that riding which by the last census had the smaller population. If a town or incorporated village is situate in part within two or more counties, and is attached to a union of counties for municipal purposes, then the union is treated as if it constituted one county, and as if the electoral districts into which the union is divided were ridings of that county, and the town or village is deemed to belong to the electoral district having the smaller population.

Qualifications of electors.

Who may not vote.

2. Qualifications of Electors. There are certain persons who may not be voters; they are Judges, customs officers, clerks of the peace, county attorneys, registrars, sheriffs, deputy sheriffs, deputy clerks of the Crown, agents for the sale of Crown lands, postmasters in cities and towns, police or stipendiary magistrates and excise

\* According to the present arrangement, Toronto contains four electoral divisions and Hamilton two. Kingston includes the village of Portemouth. Ottawa includes certain parts of the township of Nepean and returns two members. London returns one member.

officers. A penalty of \$2,000 is incurred if any of these persons vote at an election. No returning officer or election clerk, and no counsel, agent, solicitor or clerk, who is employed by a candidate in any capacity relative to the election, or who accepts or has been promised any reward or fee, can vote. No woman can vote at an election.\* As to the qualification of voters, no property or income qualification is now required. Every male person of the full age of twenty-one years, a subject of Her Majesty by birth or naturalization, and not disqualified as above mentioned or prohibited from voting by law, is entitled, if enrolled on the voters' list, the preparation of which will be next described, to vote at elections for the Legislative Assembly; but such person must have resided within the province for the nine months next preceding the time fixed for beginning to make the assessment roll in which he is entitled to be entered as a person qualified to vote, or must have resided within the province for twelve months next preceding the time up to which a complaint may be made to the County Judge under the Voters' Lists Act, or under the Election Act, to insert his name in the list. He must also have been in good faith at the time so fixed a resident of, and domiciled in, the municipality on the list of which he is entered, and at the time of tendering his vote must have been a resident of, and domiciled within, the electoral district, and must have resided in that district continuously from the time fixed for beginning to make the roll or for making his complaint. Temporary absence in the prosecution of a person's occupation, as a lumberman, mariner or fisherman, or as a student in an institution of learning in the Dominion of Canada, does not disqualify. No scholar or student at any school, university or other institution of learning, can be entered as a voter unless he has no other place of residence entitling him to vote. No person can be entered on the list who at the time of marking, or entering, or voting, is a person in a gaol or prison undergoing punishment for a criminal offence, or who is a patient in a lunatic asylum, or who is maintained as an inmate receiving charitable support in the municipal

Who  
may vote.  
55 Vict.  
c. 3.

\* Women may vote at municipal elections. Such elections are discussed later on.



## Indians.

poorhouse, or house of industry, or in any charitable institution receiving aid from the province. Indians, if enfranchised, can vote like other persons without having the proper qualification. Unenfranchised Indians of whole or part Indian blood, not residing among Indians or on an Indian reserve, must, in lieu of legal enfranchisement, have the following property qualifications in order to entitle them to vote. These qualifications are: The person must have been at the time of the election resident of, and domiciled within, the electoral district for which he claims to vote; that at the time of the final revision and correction of the assessment roll he must have been entered on that roll for real property as follows: In cities and towns, \$200; in incorporated villages and townships, \$100.

Such Indians can vote and also participate in the annuities, interest, moneys or rents of a tribe of Indians. If there is no assessment roll the only unenfranchised Indians who can vote are those who do not share in Indian annuities and do not live on an Indian reserve. Unenfranchised Indians of whole or part Indian blood, residing among Indians on an Indian reserve, shall not be entitled to vote.

## Voters in districts.

In the electoral districts of Algoma East, Algoma West, East Victoria, North Hastings, North Renfrew, South Renfrew, Muskoka, Nipissing and Parry Sound, the following persons are entitled to vote: Every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization and being not otherwise disqualified, who is at the time of the election a resident of and domiciled within the electoral district for which he claims to vote, and actually and bona fide owner of real estate in the electoral district of the value of \$200 or upwards, or who at the time of the election is a resident householder of the place, and has been an owner or householder for the six months next preceding the election. The land on which the person claims must have been granted or patented by the Crown, and a person who is a mere lodger or boarder in a house is not a resident householder.

The effect of these provisions is, that except in the isolated cases above mentioned, property qualification is no longer required for an elector.

**Voters' Lists.\*** The clerk of each municipality must, immediately after the final revision and correction of the assessment roll in every year, make a correct alphabetical list in three parts of all persons of the full age of twenty-one years, and British subjects by birth or naturalization, and appearing by the assessment roll to be voters of the municipality, prefixing to each name its number on the roll. The first part of the list contains the names in alphabetical order of all such persons appearing by the assessment roll to be entitled to vote at both municipal elections and elections for members of the Legislative Assembly. The second part contains the names of all such persons and of all widows and unmarried women of full age, and subjects as aforesaid, appearing on the assessment roll to be entitled to vote in the municipality at municipal elections only, and not at elections for members of the Legislative Assembly. The third part† contains the names in like order of all other male persons and subjects as aforesaid appearing by the roll to be entitled to vote at elections for members of the Legislative Assembly only, and not at municipal elections. The name of the same person must not be entered more than once in any part. If a municipality is divided into polling sub-divisions the list must be for each of the sub-divisions. In the voters' list the capacity in which any person is entitled to vote must appear opposite his name. The clerk of a township municipality in making out the list must insert in it a schedule containing the name, numbered consecutively, of every post office which by the assessment roll appears to be, or within the knowledge of the clerk is, a proper post office address of any person entered on the list. In making out the list he must insert opposite the name of every person on the list the number answering to the post office address.

\* See special legislation in case of cities with a population of over 100,000, post, page 193. For registration in cities to provide for manhood suffrage, see page 186.

† This part is not necessary in cities where the manhood suffrage list is made out: 57 Vict. c. 4, s. 3 (2).

Voters' lists.

52 Vict. c. 3.

Duties of  
assessors  
in cities.

In cities it is directed that every city assessor must, by careful enquiry at every house within the limits for which he is assessor, ascertain as far as he can the names of all persons over the age of twenty-one years residing in the house, who are entitled by law to vote at the election to the Legislative Assembly for the electoral district in which such house is situate. He must enter the names of these persons in his assessment roll, and every person is required, under a penalty of twenty dollars, to answer truly all questions put to him by the assessor. In order to assist the assessors in their work, the municipal clerk is directed to deliver to every assessor one of the printed copies of the then last revised voters' list, and also an alphabetical list of the male persons over twenty-one years of age who have died in the city during the preceding year, so far as he is able. In order to enable the clerk to deliver the list of deaths above referred to, the clerk of every city, before making his semi-annual return to the Registrar-General on the forms supplied to him as the division registrar, must keep a list of the deaths of persons over twenty-one years of age. If there is an assessment commissioner it is his duty and the duty of the mayor to see that the assessors duly perform these duties. The assessor returns his assessment roll to the clerk, and the latter must then make out a correct alphabetical list of all persons appearing by the assessment roll entitled to be placed on the list, and the name of each person is numbered upon the roll. The clerk must also deliver one copy to the assessment commissioner. In order to afford an opportunity of having added to this list, without the necessity of a formal appeal, names of persons who are qualified voters but whose names do not appear on the list, the assessment commissioner must receive applications from persons requiring their names to be added, public notice being given of the time when such applications will be heard. If the assessment commissioner adds no name or omits no name he must at once report that fact. If he adds names to the original list or strikes off names, which he has power to do, he must prepare two lists, setting forth in alphabetical order the names added and the names struck off. These

Duties of  
clerk in  
aid of  
assessor.

Duties of  
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lists are to be in sets, one for each polling sub-division in the city. These lists must be attested by the oath of the assessment commissioner. Immediately after receiving this report the clerk must cause copies to be printed and must post them up in the same way as the original list is required by law to be posted. Notice must also be inserted in the newspapers in the city. The alphabetical list made by the clerk on receiving the assessor's roll, with the additions and omissions and corrections set forth in the assessment commissioner's report, are to be deemed together a list of the voters, subject to revision by the County Judge.

The time for giving notice of any complaint to the County Judge is thirty days after the clerk has posted up in his office the assessment commissioner's report and the lists referred to in it. The voters' list must be revised, corrected and certified by the Judge within two months after the clerk first posts up in his office the assessment commissioner's report. After the voters' list has been finally revised, corrected and certified by the Judge, and before the nomination day at any election, but not after the nomination day, the Judge is given power to strike from the lists the names of all persons who have died. The certificate of the Registrar-General or the division registrar is sufficient evidence of the death, coupled with facts of identity.

Revision  
by County  
Judge in  
cities.

Immediately after the clerk has made his alphabetical list, and in cities within forty days, and in other municipalities within thirty days after the final revision and correction of the assessment roll, the clerk must cause at least two hundred copies of the list to be printed in pamphlet form if possible. He must keep one copy posted up in his office; he must send three copies to each Judge of the County Court of the county, and two copies to the members of the municipal council, the treasurer, the sheriff, the clerk of the peace, every postmaster and every head master or mistress of a public or private school in the municipality; he must also send ten copies to each member of the House of Commons, to each member of the Legislative Assembly, in both cases for that electoral district—also to every candidate

Distribu-  
tion of  
printed  
voters' lists

for whom votes were given at the last election, and to the reeve of the municipality. These copies of the list must be certified to by the clerk. The sheriff must post up his copy in the court house; the clerk of the peace must post up his in his office; the head master or mistress must post up theirs on the door of the school house, and every postmaster must post up one of his notices in his office. Notice of the transmission of all of these copies must be given in the newspapers.

Revision  
of voters'  
lists.

The list as made out by the clerk is subject to revision by the County Judge at the instance of any voter or person entitled to be a voter in the municipality for which the list is made, or in the electoral district in which the municipality is situate, on the ground of names of voters being omitted from the list, or being wrongly stated in it, or of names of persons being inserted in the list who are not entitled to be voters. On the revision, the assessment roll is not conclusive evidence; the matter is determined by the Judge, whose decision in regard to the right of any person to vote, or as to the insertion or omission of any name, is final. The Judge himself may, without a previous notice of appeal or complaint, on an application made by any person named in the list, correct any mistake which shall be proved to him to have been made in its compilation. Evidence may be produced and given before the Judge that any person has no qualification or no sufficient qualification to entitle him to be a voter, and the Judge may strike the name of the person off the roll. Any person making complaint must, within thirty days after the clerk of the municipality has posted up a list in his office, and in cities within thirty days after the assessment commissioner has made the report I have before described, give notice in writing of his complaint and intention to apply to the Judge. Notice of the holding of the Court must be given at least ten days before the sittings in some newspaper published in or near the locality. The Judge must so arrange and fix the sittings of the Court that the complaints shall be heard and determined, and the list finally revised, corrected and certified within two months of the last day of making complaint. If no com-

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plaint respecting the list is received by the clerk within the thirty days above mentioned, the clerk must apply to the Judge to certify three copies of the list as being the revised list of voters for the municipality; the Judge must retain one of the certified copies, and transmit one of them to the clerk of the peace, and another of them to the clerk of the municipality. If complaints have been made, then immediately after the list has been finally revised and corrected, the Judge must make a statement in triplicate, setting out the changes which have been made. This statement and the corrected copies of the list must be prepared by the clerk of the municipality, or else the Judge certifies the corrected copies which he holds as being the finally revised list. This finally revised list is then certified also in triplicate, one copy being kept by the Judge, one copy being sent to the clerk of the peace and another to the clerk of the municipality. The voters' list, when certified to by the County Judge, is the final and conclusive evidence of the right of every person named in it to vote on any election, except (1) persons guilty of corrupt practices, or (2) persons who, after the list is certified, become non-resident, and for that reason disentitled to vote, and (3) persons who are disqualified to vote.

Certified  
list.

The Court to be held by the Judge must be provided for by the municipality, and the Judge has the same powers in this Court as he has in ordinary judicial proceedings. If an appellant, who is entitled to appeal, abandons an appeal begun, then the Judge may allow any other person to intervene and prosecute the appeal. If errors are found in the voters' list, and it appears to the Judge that the assessor was blamable for any of the errors, the Judge must order the assessor to pay the cost occasioned by the mistake; in case of errors for which the clerk was to blame, the clerk must be charged with the costs; in case of errors of the Court of Revision, the municipality, in the case of cities as well as any other municipalities, must pay the costs, subject to any claim which the municipality may have against guilty parties, or the Judge may order the assessor, clerk or municipality to pay the costs if any party fails

Court of  
Revision  
of voters'  
lists.



to recover them from any other party named and ordered to pay them; and in other cases the costs are in the discretion of the Judge. The only costs to which an appellant is liable are witness fees, except in frivolous or vexatious appeals, or in cases of bad faith. In these cases the Judge may order the appellant or complainant to pay costs not exceeding double the amount he would otherwise be liable for. The payment of costs may be enforced by execution against goods and chattels. Cases may be stated for the opinion of the Court of Appeal, and after argument, the opinion of the Court must be given and forthwith published in the Ontario Gazette, and a copy sent to every County Court Judge. Any voter may also request an opinion from the Court of Appeal, but the Court may require a deposit of money to recover the expenses of counsel. If a person not assessed, or not sufficiently assessed, is found entitled to be a voter at the municipal elections, the municipality becomes entitled to recover taxes from him as if he had been assessed, and the Judge may so order. No person can make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal agreement whereby a colourable interest in any land, house, or tenement, is conferred in order to qualify a person to be a voter. If any person makes such an arrangement he incurs a penalty of \$100, and any person who induces or attempts to induce another to commit this offence incurs the like penalty. Penalties are provided for the failure of the clerk of the municipality to perform his duties, and for the prevention of the improper insertion of names on the roll.

Colourable  
transfers  
to give  
votes.

Registration  
of  
Manhood  
Suffrage  
voters in  
cities.

57 Vict.  
c. 4.

For the purpose of registering manhood suffrage and other voters in cities, special provisions have been made. The substance of these provisions is as follows: Every male person of the age of twenty-one years, a subject of Her Majesty by birth or naturalization, and not disqualified under the General Election Law, and not otherwise prohibited by law from voting, is entitled to be entered on the list of manhood suffrage voters for the polling sub-division in which he resides. Such



person must, however, have resided within the province for twelve months next preceding the date on which the first sitting of the registrars of manhood suffrage was held for the preparation of the list of manhood suffrage voters. Such persons must, secondly, have been in good faith on the last mentioned date and for three months preceding, a resident of and domiciled in the city on the list of which he is to be entered. Thirdly, he must have been in good faith on the same date, and for the next preceding thirty days, a resident of and domiciled within the territory comprising the electoral district on the list of which he is to be entered. Every person possessing the above qualification, if duly entered on the list of voters in the poll book hereafter mentioned, is entitled to vote at elections to serve in the Legislative Assembly, provided he is at the time of tendering his vote a resident of and domiciled within that electoral district for which he wishes to vote. He must also have been a resident in that district continuously from the date on which the first sitting of the registrars for the preparation of the voting list was held until the time of voting. If the city is divided into electoral districts, and the person claiming to vote has resided and been domiciled in the city continuously for the above mentioned period of three months, but has not resided for thirty days within the electoral district in which he on said date resides and is domiciled, he may register in that other electoral district in the city in which he resided for thirty days continuously, it being part of the three months immediately preceding his removal into the electoral district in which he resides at the time of the sitting. This residence in another electoral district than the one he wishes to vote in, qualifies him to be a voter as if he had resided continuously in the same electoral district. If the person who claims to be entitled to be registered is not able to attend the sitting of the registrars by reason of sickness, or physical disability or temporary absence, a notice can be given on his behalf by some other person to whom he is known. If a person is temporarily and unavoidably bona fide absent from the city and

Residence.

Absence of  
applicant.

Board of  
Manhood  
Suffrage  
Registrars.

Notifica-  
tion to  
Board of  
Election to  
take place.

county in which the city is situated, but within the Province of Ontario in the necessary prosecution of his business or calling, and has not been absent more than thirty days prior to the first of the four days of the sitting of the registrars, then application may be made on his behalf by some person who knows the absentee. Lists of all absentees are kept, and supplementary sittings are held to provide for the registration of such absentees. A board is constituted in each city for making up lists of persons entitled to be registered as manhood suffrage voters at elections for the Legislative Assembly. This board is called the Board of Manhood Suffrage Registrars. In county towns the board consists of the County Judge, the police magistrate and the clerk of the County Court. If one of them is unable to act the other two will appoint a substitute. In the cities of Toronto, Hamilton, Ottawa and London, certain officials are made *ex officio* members of the board. The Lieutenant-Governor in Council appoints one of the members of the board to be chairman of the board, and the board at their first meeting appoint a permanent chairman, who holds office during the pleasure of the board. The city must provide necessary accommodation in which the registrations take place, but this registration office must not be a tavern or place of public entertainment, and there must be free access for every person desiring to be registered. When a city is divided into two or more electoral districts, two of the *ex officio* members are assigned to each of the electoral districts of the city as constituted for electoral purposes. Subdivisions of districts are made for convenience of registration. Immediately on the issue of a proclamation dissolving the Legislative Assembly, then immediately after said date, or in the case of a bye-election, immediately after the issue of the writ of election, the clerk of the Legislative Assembly, in his capacity of clerk of the Crown in Chancery, must notify the chairman of the board of the dissolution or of the issue of the writ. When a new registration is required, the chairman must call the board together, and the board must forthwith take the necessary proceedings for the registration of manhood suffrage voters. Every regis-

trar must appoint a registrar's clerk to assist him in preparing a list of the persons entitled to vote, and one of the registrar's clerks is appointed clerk of the board. The registrars hold four sittings for the registration of persons claiming to be entitled to vote, the first of the sittings being on the sixth day after the dissolution, or in case of a bye-election on the sixth day after the date of the writ. The sittings must be held on consecutive days excepting Sunday, and shall continue from nine in the morning until ten at night, with two hours' intermission. The time from half-past seven to half-past eight o'clock in the evening is, as far as possible, to be set apart for the registration of the votes of workingmen. The registrar or registrar's clerk under his direction registers in the several polling sub-division books, which are furnished to them, the names and residences, as are stated in their oaths respectively, of all persons applying to be registered who take the oath required, and who reside in the respective sub-divisions. If it appears to the registrar from the answers of the applicant to the questions put to him, and after hearing any evidence then produced that the applicant is not entitled to be registered as a voter, the registrar shall not enter the name. All names are classed in alphabetical order. If the applicant refuses to take the oath, or refuses, or is unable to give the information requisite to enable the registrar to fill up the particulars necessary in respect of the application, the applicant cannot be registered either at that sitting or any subsequent sitting. An entry is made of the fact that the applicant refused to swear or was unable to give particulars, and an alphabetical list of all such persons is kept by the registrar and delivered with the registration lists. A record is kept of the work of each of the four days, and is certified to by the registrar. If the registrar refuses to register an applicant who has taken or who is willing to take the oath, the applicant may appeal, after giving twenty-four hours' notice in writing to the registrar and to the Board of Appeal. This Board of Appeal is constituted by the Board of Revision. Evidence may be taken under oath before the Board of Appeal, and if

Procedure  
at sittings  
for registra-  
tion.

Board of  
Appeal.

they decide that the applicant is entitled to vote, they grant him a certificate to that effect. This certificate entitles a person to vote on presentation to the deputy returning officer. For purposes of preservation of the peace each registrar is invested with the same powers as a justice of the peace in the province, and may appoint special constables to assist him. Any candidate is entitled to appoint two electors as agents to represent him at any registrars' sitting. Any elector may act as agent for a candidate without producing any special authority in writing. Any political organization may also appoint in writing two electors as agents to represent them at any registration sitting. Any elector is entitled to be present as spectator at a registrars' sitting, but not more than twelve persons other than the officers and agents are entitled to be present at the same time, and no person can ask any question of an applicant for registration except the agent of a candidate, and all questions must be put through the registrar or by his permission. If the registrar becomes unable to act, then the registrar's clerk acts as registrar, and in turn appoints another person to act as registrar's clerk. If by riot, or for any other reason, the sitting is not commenced on a proper day or interrupted, it must be resumed on the following day until the registrar's office has been open without interruption for forty-four hours in all, but the registrations must be completed at least three days before the polling day. As soon as the lists are completed the registrar delivers to the clerk of the peace the books containing the list certified to by him. He at the same time delivers the books containing the oaths of the persons registered. The clerk of the peace retains these books until they are replaced by another registration, when they may be destroyed, unless the Attorney-General directs their preservation for a future period. In the case of a bye-election, the writ for which is dated more than a year subsequent to the polling date of the previous election, the proceedings for registration directed in the case of a general election are to be taken, unless the Clerk of the Crown in Chancery on the issue of the writ notifies the chairman of the Board of Regis-

Comple-  
tion and  
delivery of  
lists.

tration that a new registration is not required. This notification may be made if the Premier of the Executive Council for Ontario and the leader of the Opposition in the Legislative Assembly certify to the clerk in writing that in their opinion a new registration is unnecessary. If a bye-election is held less than a year after the registration, no new registration is required. This last mentioned notification must be made upon the written request of either the Premier of the Executive Council or the leader of the Opposition.

In cities of over one hundred thousand inhabitants (at present Toronto alone satisfies this requisite), whenever a by-law is passed for taking the assessment before the 30th September and fixing prior and separate dates for the return and final revision of the assessment rolls, according to wards or other sub-divisions of the city, then the following steps are taken instead of those set out, as provided for other cities.

Voters' lists in cities of over 100,000 inhabitants.

59 Vict. c. 2.

Within fifteen days after the final revision of the assessment roll the clerk must make up and print and distribute the alphabetical list of voters. The time for making complaints as to errors or omissions is within seven days after the publication of the notice. If no complaint is received the clerk applies to the County Judge to certify three copies. The Judge retains one copy, sends another to the clerk of the peace and the third to the clerk of the municipality. If there are complaints the Judge must dispose of them within ten days after the last day for making complaints. All lists must be revised by the first of December.

After preparing, printing and posting up the last of these lists, the clerk must publish a notice calling for any further complaint. These complaints must be made within fourteen days from this notice. The Judge then holds a last sitting, when he finally adjusts the list. The clerk produces the assessment roll and the Judge enters in it his corrections. A separate list of these corrections is also made up and forwarded to the clerk of the peace. These lists, thus finally revised,

corrected and certified, are the voters' lists within the meaning of the Voters' Lists and Election Acts, and also the Municipal Act.

These proceedings complete the preliminary steps held necessary before the actual taking of the votes. This next step I will now proceed to describe.

Mode of  
conduct-  
ing elec-  
tions.

55 Vict.  
c. 3.

As to the mode of election and proceedings at elections, all municipalities are divided into polling sub-divisions containing two hundred qualified voters in each; these polling sub-divisions are used both for the election of members of the Legislative Assembly and for municipal elections. When we come to the municipal system of Ontario we shall find that the electoral principle pervades that whole system as well as that of representation in the Legislative Assembly; and that the municipal electoral system is founded on that of the Legislative Assembly. A polling sub-division need not be divided if it contains more than two hundred voters, so long as it does not contain more than three hundred; if it contains more than three hundred, it must be re-divided. All sub-divisions are based on the last revised and corrected assessment roll. Any mistakes in sub-division will be corrected by the Judge of the County Court; all sub-divisions are numbered.

Returning  
Officer.

For the purpose of securing regularity in elections, an official called the returning officer is appointed, to whom a writ of election is issued by the Provincial Secretary. All election writs are addressed to the sheriff or the registrar of the county; if there is no sheriff or registrar, then to such person as the Lieutenant-Governor may appoint. No member of the Executive Council, or of the Parliament of the Dominion, or of the Legislative Assembly, can be appointed or act as returning officer; nor can any clergyman, priest or ecclesiastic, or Judge, or persons who have served in the last preceding session of the Legislative Assembly. No medical man or miller, or postmaster, or person over sixty years of age, or any person who has previously served as returning officer, can be compelled to act.



When a new Legislative Assembly is called, and a <sup>Election day.</sup> general election is to be held for the election of its members, the Lieutenant-Governor in council must fix the day for holding the elections, and also the day on which the polling is to take place, where a poll is demanded and granted. The day to be fixed must be not more than twenty days nor less than sixteen days from the date of the writs of election; and the day for holding the polls not more than eight nor less than six days after the date for holding the election. For every general election the elections for all electoral districts must take place throughout the province on the same day. The polling at all elections where polls have been demanded and granted must also take place throughout the province on one and the same day, except in the Districts of Algoma West and Algoma East; in the two latter cases, the nomination or polling must be held at some time between the 20th of May and the 30th of November. On the receipt of a writ of election, the <sup>Preliminary duties of returning officer.</sup> returning officer must endorse upon it the day of its receipt; he must then by proclamation declare the place, day and hour on which the election will be held. This proclamation must be posted up at least eight clear days before the date fixed for holding the election, which day is called the nomination day. The place of election is to be in the public place most central and most convenient for the great body of electors. The proclamation must also declare the day on which, if a poll be demanded and granted, the poll is to be opened. The returning officer must also fix one polling place for each sub-division into which the municipality is sub-divided. The building in which the poll is held must not be a tavern or place of public entertainment, and there must be free access to the poll for every elector. Every polling place must be furnished with compartments, in which the voters can mark their votes screened from observation. He must also procure as many ballot boxes as there are polling sub-divisions; these boxes must be provided with a lock and key, and so constructed that the ballot paper can be put into the box and not withdrawn unless the box is unlocked. The returning



officer must also take an oath that he will act without partiality, fear, favor or affection. He must also appoint an election clerk, who must take a similar oath. In case of inability of the returning officer to perform his duties, the election clerk must act as his substitute. On the day of nomination every returning officer must make a proclamation to the electors, requiring them to keep silence while the writ of election is being read, and also his commission as returning officer where a commission has been necessary.

No nomination.

Poll.

If at a nomination more than one candidate is proposed, then the returning officer must grant a poll for taking and recording the votes of the electors ; in case of refusal, the election is null, and the returning officer incurs a penalty of \$1,000 ; if only one candidate is nominated, and the electors then present agree in the choice to be made, the returning officer, at the expiration of one hour, closes the election and declares the person chosen duly elected. On the nomination day the name and address of the agent of the candidate, who will be presently referred to, must be announced ; it must also be published in some newspaper. Any candidate who is nominated may withdraw at any time after his nomination, and before the opening of the poll, by declaration in writing ; if, after the withdrawal, there should remain but one candidate, then the returning officer must return as duly elected the remaining candidate, without waiting for the day fixed for holding the poll, or for the closing of the poll, if the withdrawal be on the polling day. If a candidate dies after nomination and before the close of the poll, the returning officer may fix new days for the nomination of candidates and for the election ; and, in that case, the nomination day must be the nearest day possible after allowing the number of days required by law between the posting up of the proclamation and the nomination day. When a poll has been granted, the returning officer, before adjourning the proceedings, must publicly proclaim from the hustings the day previously fixed by his proclamation and the places at which the poll is to be opened in every polling sub-division, and the place

where, and the time when, he will sum up the number of votes given to the candidates. The day for opening the poll cannot be a Sunday, New Year's Day, Good Friday, Christmas Day, Dominion Day, or the Queen's Birthday. A copy of the voters' list for the sub-division must be furnished for each polling place. On the day of polling the voting commences at nine o'clock in the forenoon and must finish at five in the afternoon, and the votes are given by ballot. Any voter in a city or town is entitled to absent himself from any service or employment in which he is engaged or employed, from noon in the day time until two o'clock in the afternoon, for the purpose of voting. If required by the person in whose employment the voter is engaged, he must at some time during the same or the next week, employ himself for one hour more than the ordinary day's work, in order to make up for the lost time.

For the purpose of taking the votes at an election, the returning officer must appoint for each polling sub-division a deputy returning officer; this officer must appoint and hold the poll according to law at the time and place fixed, and at the poll take and record in the voters' list the necessary particulars as to voters. Every deputy returning officer must take an oath similar to that of the returning officer. In townships the township clerk is deputy returning officer for that sub-division in which the town hall is situate; if there be no town hall, then for the sub-division in which the first meeting of the council of the municipality was held. Where a poll has been granted, the returning officer must have printed such a number of ballot papers as will be sufficient for the purposes of election; these ballot papers are bound up in books for each polling sub-division, with counterfoils, so that, when the ballot papers are detached, the counterfoils remain. Each ballot paper shows the names of the candidates, arranged alphabetically, if possible in ink of different colours. Every ballot paper and counterfoil must specify the name of the electoral district for which it is to be used, and the ballot paper and counterfoil have the same numbers respectively. Ballot papers are also made up,

Deputy  
returning  
officer.

Ballot  
papers.

on which are printed the words "tendered ballot papers"; their purposes will be explained later on. The deputy returning officer must also be furnished by the returning officer with the necessary materials for voters to mark their ballot papers; the ballot boxes must be delivered two days at least before the polling day to the deputy returning officers. The returning officer must also have prepared printed directions for the guidance of the voters in voting, and these directions must be given, at least ten to each deputy returning officer; these printed directions must be posted up outside the polling places. The returning officer must also obtain from the clerk of the municipality and deliver to every deputy returning officer a certificate of the day when the assessment roll was returned by the assessor, and of the day when the roll was finally revised and corrected. The object of this certificate is that it will furnish evidence to the deputy returning officer as to the inserting in the oath the date of the return or final revision of the assessment roll, as required.

The first and third parts\* of the last list of voters certified by the Judge, and delivered or transmitted to the clerk of the peace under the Voters' Lists Act, as I have already explained, before the date of the writ of election, is the list to be used at an election to the Legislative Assembly. No person can be admitted to vote unless his name appears on this list. If a person whose name is not entered on the copy of the voters' list delivered to the returning officer or deputy returning officer, claims that he ought to be allowed to vote, on taking an oath to the effect that his name ought to appear, he shall be entitled to mark a tendered ballot paper, as will be presently more fully explained. The returning officer must also procure from the clerk of the peace a copy of the proper list of voters for every polling sub-division, and deliver to each deputy returning officer his list for his sub-division. On receiving this copy the deputy returning officer must prefix a number to every name; these numbers may be chosen arbitrarily by the deputy returning officer, but he must take all necessary precaution for concealing from all persons, except the

Tendered  
ballot  
paper.

\* Except in cities. See pages 183, 192, 194.

poll clerk, these numbers. Each deputy returning officer has a poll clerk to assist him; the poll clerk must take an oath similar to that of the returning officer. The poll clerk must aid and assist the deputy returning officer; and, in case of inability of the deputy returning officer to act, the poll clerk takes his place, and in turn appoints another poll clerk. A person may vote at any polling sub-division in which his name appears, but no person can vote at more than one polling place, under a penalty of \$200. Any deputy returning officer or poll clerk, if an elector, is entitled to vote at the polling place where he is stationed during the polling day, instead of his own sub-division. A list is kept of every person voting in this way, which is called the "outside voters' list." Immediately before the commencement of the poll the deputy returning officer must show to the persons present the ballot box, so that they may see that it is empty; he must then lock the box, seal it, and place the box in his view for the receipt of the ballot papers, and keep it locked and sealed. When a person presents himself to vote the deputy returning officer, after satisfying himself that the name of the person is on the list, must record the residence and legal addition of the voter. If the voter is sworn, it must appear on the list; if objected to, this fact must appear. If the person refuses to be sworn, a note must be made of the fact. No person who refuses to take the oath or affirmation of qualification can receive a ballot paper or be admitted to vote; if received, the vote is null and void. When these preliminaries are finished, the deputy returning officer must stamp or sign his name or initials on the back of the ballot paper and on the counterfoil, with no other figure or mark. The ballot paper is then detached from the counterfoil and delivered to the voter. The counterfoil is retained in the book by the deputy returning officer, who marks upon it the number prefixed to the name of the person upon the voters' list, and opposite the name of the person in the list a mark is placed to show that he has received a ballot paper, but not showing the particular ballot paper handed over. Any

Poll clerk.

Outside  
voters' listProceed-  
ings at  
polling.

Mode of  
voting.

person offering to vote may be required to either swear or affirm that he is entitled to do so. If a deputy returning officer knows of or suspects any fraud, he must himself tender the oath to the person attempting it. When a voter receives the ballot paper he proceeds into one of the compartments, and marks his ballot paper by placing a cross on the right hand side, opposite the name of the candidate for whom he desires to vote; he then folds the ballot paper across so as to conceal the names of the candidates and the mark made by him, and so as to expose the initials of the deputy returning officer and the number on the back. He leaves the compartment, and, without showing the front to any one, or displaying the ballot paper, delivers it as folded to the deputy returning officer; who, without unfolding the same or in any way disclosing the names or the mark, verifies his own initials and the number, and puts the ballot into the ballot box in the presence of all then present. No ballot paper can be taken out of the polling place. If a person, having received a ballot paper, leaves the polling place without delivering the ballot paper to the deputy returning officer, he forfeits his right to vote. If he receives the ballot paper and then declines to vote, the deputy returning officer must write the word "declined" upon the ballot paper. If a person cannot, by blindness or other physical cause, mark his ballot paper, or if a person makes a declaration that he is unable to read, the deputy returning officer marks the ballot for such person. If a person represents himself to be a particular elector named on the voters' list, and it is found that another person has voted instead, the applicant must, on taking the oath, be given a "tendered ballot paper." This tendered ballot paper is placed by the deputy returning officer in an envelope, securely sealed, and is placed by him in the ballot box. It is not counted, but the name and number of the person is endorsed on the counterfoil by the deputy returning officer; a list is made, called a "tendered voters' list," in which the name and number of the person is entered. If a person, whose name is not on the list, claims that his name ought to be on the list, he is, in like manner,

Declined  
ballot  
paper.

Tendered  
voters' list

entitled to mark a tendered ballot paper; this tendered ballot paper is dealt with in the same manner as that just described. If a ballot paper has been spoiled inadvertently, then the deputy returning officer must furnish another ballot paper, and write upon the spoiled one the word "cancelled," and preserve it. No person is entitled or permitted to be present in a polling place, except the officers, candidates, clerks or agents authorized to attend, and such voters as are actually engaged in voting. The deputy returning officer may, for the purpose of preventing obstruction, summon to his assistance any police constable or police officer. After the close of the poll the deputy returning officer, in the presence of the poll clerk and of such of the candidates or their agents as may happen to be present, opens the ballot box and counts the votes. The various classes of ballot papers are separated. All improperly marked ballot papers are not counted, but objections are numbered. A written statement is then made up by the deputy returning officer, giving in words, as well as figures, the number of votes given for each candidate and the number of ballot papers rejected and not counted, distributed under their several heads; this statement must be signed by the deputy returning officer, the poll clerk, and such of the candidates or their agents as may wish to sign the statement. Every deputy returning officer must, at the close of the poll, certify on the voters' list the total number of persons who have voted at his polling place, and furnish, on request, a certificate of the number of votes given for each candidate, and the number of rejected ballot papers. On the completion of the count of the votes the deputy returning officer makes up into separate packages, sealed up, all the ballot papers and various lists; these packets are delivered personally to the returning officer, accompanied by a statement showing the number of ballot papers, accounting for them all. No scrutiny of the votes is to be granted, either by the returning officer or by the deputy returning officer. After the election, the deputy returning officer and the poll clerk make an oath, verifying the voters' list used

Cancelled  
ballots.Close of  
polling.



Declaring  
result  
of poll.

at the election. The ballot boxes are delivered to the clerk of the municipality, and kept for future use. The returning officer, after he has received the ballot papers and statements, must, at the place and time named from the hustings for this purpose when granting a poll, open the statements. As soon as he has ascertained the result of the poll, he declares to be elected the candidate having the highest number of votes. If an equality of votes is found to exist, and a casting vote is required, the returning officer may give an additional vote; but he cannot in any other case be entitled to vote at that election.

Recount  
of votes.

If it is made to appear on the affidavit of a credible witness to the County Judge that a deputy returning officer has improperly counted or rejected any ballot papers, the County Judge, where the majority for the successful candidate is under fifty votes, may appoint a time for the recount of the votes; notice in writing is given to the candidates or their agents; the time appointed for the recount must not be more than four days from the date of the appointment, and notice must be served not less than two days before the time appointed. The County Judge, the returning officer and his election clerk, and the candidates, and one agent for each candidate, are entitled to be present during the proceedings. At the time and place appointed, the County Judge opens the sealed packets and recounts the votes; care must be taken that the mode in which any particular elector has voted shall not be discovered. The recount is a continuous proceeding, allowing only time for refreshment, excluding only Sundays, and the hours between six in the evening and nine in the morning. During the excluded time, the County Judge takes the election papers under his own sole control. The result of the recount is certified to the returning officer, who then declares to be elected the candidate having the highest number of votes. The final return of the election is made by the returning officer to the Clerk of the Crown in Chancery. If the majority for the successful candidate is over fifty it must be within ten days after he has ascertained the

Final  
return.



result of the poll; if the majority for the successful candidate is under fifty, after the fifth day from the day on which he receives the last return of any deputy returning officer, and within ten days after he has ascertained the result of the poll. If a recount has been demanded, he must wait for the result of the recount. All papers connected with the election must also be transmitted to the clerk of the Crown in Chancery; they are kept for one year, and then, unless ordered to be kept by a Judge of the Court of Appeal or Election Judge, they are destroyed by fire. Any wilful delay in returning a person as elected subjects the returning officer to a civil action for damages; provided the action be commenced within one year after the commission of the act complained of, or within six months after the conclusion of the trial relating to the election. The clerk of the Crown in Chancery, on receiving the return, must publish notice in the Ontario Gazette. No inspection of rejected ballot papers can be allowed, except under order of Court. Ample provision is made for the maintenance of the public peace during elections. No weapons are allowed; no party ensigns, flags, standards or badges are allowed to be worn or carried. No information can be given as to how any person voted; no person who has voted at an election can be required to state for whom he voted. Corrupt practices, by giving money to voters, or procuring employment, or making gifts or loans, or in any other way corruptly influencing voters, are prohibited. No drink or entertainment can be allowed; no wagering or betting can be allowed; hiring of vehicles or furnishing railway tickets or passes free of charge for the use of electors is prohibited. All persons who are guilty of any of these offences are held to be guilty of corrupt practices; the election may thereby be voided. No strong drink can be sold or given at any hotel, tavern, shop, or other place during polling day. If the corrupt practices are found to be of such trifling nature, or of such trifling extent that the result cannot have been affected, or be reasonably supposed to have been affected, by these corrupt prac-

Clerk of  
the Crown  
in Chan-  
cery.

Corrupt  
practices  
forbidden

Candidate found guilty of corrupt practices.

Persons other than candidates found guilty of corrupt practices.

Court for control of corrupt practices.

tees, then the election is not avoided; but the general rule is that wherever corrupt practices have been proved the election is void. A candidate who has been found guilty of corrupt practices, in addition to his election being void, is incapable of being elected during the eight years next after the date of his being found guilty of sitting in the Legislative Assembly; of being entered in any voters' list as a voter, and of voting at any election, and of holding any office at the nomination of the Crown, or of the Lieutenant-Governor in Ontario, or any municipal office. If the corrupt practice was committed by a candidate, or with his knowledge and consent without any corrupt intent, and in ignorance which was involuntary and excusable, and if the candidate honestly desired, and in good faith endeavored as far as he could to have the election conducted according to law, then the candidate is not subject to this punishment. If corrupt practices are proved with respect to voters, on a scrutiny the votes affected are struck off. Every person other than a candidate found guilty of a corrupt practice is, in like manner, during the eight years next after the time he has been found guilty, incapable of being elected to the Legislative Assembly or of voting, or of holding any office at the nomination of the Crown, or of the Lieutenant-Governor, or any municipal office. But persons other than candidates are not subject to these disabilities by reason of a merely technical breach of law, or by reason of any act not being an intentional violation of law, and not involving moral culpability or affecting the result of the election. If a candidate knowingly employs an agent, within eight years found guilty of corrupt practices, the election of the candidate is void. If any disqualification has been proved through perjury, it may be removed on proving that fact. Any two of the Judges appointed, as I will next explain, for the control of election petitions, constitute a Court for the control of corrupt practices; this Court tries all such charges, and may sentence the person found guilty to fine and imprisonment. If a moneyed penalty is imposed, the Court may direct that in default of payment, the person convicted can be imprisoned for

a period not exceeding one year, either with or without hard labour, unless the amount of the penalty be sooner paid. The main feature of the election system, as will have been seen, is the voting by ballot. The object of this mode of voting is to secure secrecy, and all the provisions are directed to attain that end.

4. Proceedings when elections are contested. After <sup>Contested</sup> an election has been held, a petition complaining of the <sup>election</sup> undue return or undue election of a member may be <sup>unsuccessful</sup> presented to the Court by any one or more of the follow- <sup>ings.</sup> <sup>R. S. C.</sup> <sup>c. 10.</sup> ing persons: (a) Some person who voted or who had a right to vote at the election to which the petition relates; or, (b) Some person claiming he had a right to be returned or elected at such election; or, (c) Some person alleging himself to have been a candidate at the election. This petition is called an election petition. If a petition is presented against the return of the member, the respondent, or any other person entitled to present an election petition, may, within fifteen days after the service of the petition against the return, file a counter petition, complaining of any unlawful and corrupt act by any candidate at the same election, who was not returned, whether the seat is or is not claimed by or for him. The petition against a return must be presented within twenty-one days after the return has been made to the clerk of the Crown in Chancery, unless it questions the return on election upon an allegation of corrupt practices, and specifically alleges the payment of money or other act of bribery to have been committed by the member on his account, or with his privity, since the time of the return, in pursuance or in furtherance of the corrupt practices. In this latter case, the petition may be presented within twenty-eight days after the date of the payment or act committed. The petition is filed with the registrar of the Court, and an affidavit verifying the petition must be filed with it. Security for the costs and expenses must be furnished at the time the petition is filed, or within three days afterwards. The amount of security is \$1,000, which is deposited in some bank to the credit of the accountant of the Supreme Court. The petition must be served

**Election  
list.**

upon the respondent within five days after the time when the security for costs is furnished. A list of all the petitions is kept by the registrar of the Court in his office, which is called the election list. The petitions are tried in the order in which they stand in the list. Every party to an election petition may, at any time after the petition is at issue, be examined for the purposes of discovery of evidence by any person adverse in interest. The examination is taken in the same way as that of parties to a suit. The trial of every election petition must be conducted before a Judge, or two Judges, selected from a rota formed for that purpose. The members of the Court of Appeal, and of the three divisions of the High Court of Justice, select one of the Judges to be placed on the rota during the ensuing year; this choice is made on or before the third day of Michaelmas Sittings in each year. Allegations of corrupt practices against the candidate must be tried by two Judges on the rota. No candidate can be accused of corrupt practices, nor can any person be declared guilty of a corrupt practice, or disqualified, except on the decision of the two Judges jointly, or of the Court of Appeal. The trial of the petition must take place in the electoral district, the election for which is in question; but the place of trial may be changed, if necessary, by the Court. Notice of trial must be given not less than fourteen days before the day of trial. The Judges have the same powers of trial as they have in their ordinary Courts. If three months elapse after the presentation of the petition without the day of trial being fixed, an elector may be substituted for the petitioner. The trial of every petition must be commenced, however, within six months from the time the petition was presented, and, when commenced, must be continued from day to day until concluded. If the member-elect is entitled to take his seat, the trial of the petition must not, without his consent, be held during the session of the Legislative Assembly, or within fifteen days after the close of the session; the time occupied by the session is not included in the computation of the six months. When the evidence has been heard, the Judge or Judges drawing the peti-

**Trial of  
petition.**

tion must determine whether the member whose election or return is complained of, or what other person was returned or elected, or whether the election was void; and must certify the result to the Speaker. If there is a disagreement between the Judges before whom a petition is tried, they must certify their disagreement; either party may thereupon bring the matter before the Court of Appeal; that Court has the same jurisdiction in all respects as on an appeal from any other decision. The registrar must certify to the Speaker, or, if there is no Speaker, to the clerk of the House, their judgment and decision. If there is a trial before two Judges, every certificate and report sent to the Speaker must be under the hands of both Judges; if there is a difference, they must certify that difference. There is no appeal from a decision of the Judges declaring that a candidate or other person has not been guilty of corrupt practices, or finding in favor of the candidate any of the extenuating circumstances I have mentioned under the last heading of elections. If a charge is made in an election petition of a corrupt practice having been committed, the Judges must report in writing whether any corrupt practice has existed; the names of any persons who have been proved to have been guilty of any corrupt practice, and whether such practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates. The Speaker, on receiving the certificate and report, must communicate the same to the Legislative Assembly. The Legislative Assembly then enters the certificate and report on its journals, and gives the necessary directions for confirming or altering the return, or for issuing a writ for the new election, or for carrying the determination into execution, as may be required. Any person to an election petition under this Act, who is dissatisfied with the decision of the Judges on any question of law or fact, and who desires to appeal against that decision, must within eight days deposit with the registrar of the Court the sum of \$100, by way of security for costs. The person appealing must, within three days after the security has been given, give notice

Report of  
corrupt  
practices.

Scrutiny.

Withdrawal of petitions.

of setting down the appeal to be heard; the Court then disposes of the matter in the same way as other appeals. The registrar of the Court then certifies to the Speaker the judgment and decision of the Court, which are final. Where, in consequence of an election petition being presented, it becomes necessary to enter into a scrutiny of the votes polled, the Judge may make provision for holding in every local municipality in the electoral division a scrutiny of the votes polled in that municipality. The scrutiny may be before the Judge or his registrar, or some barrister appointed in his stead. If the decision of the delegate is unsatisfactory, an appeal may be had to the Judge himself. No election petition can be withdrawn without the leave of the Court. Notice may be given of the intention to withdraw, and on the return of that motion a substitute may be appointed; if there are more petitioners than one, all of them must consent. On the death of any petitioner the petition becomes abated. Notice of this fact must be given in the electoral district to which the petition relates, and any person who might have been a petitioner may be substituted. If the respondent, during the trial of an election petition, should die, or if the Legislative Assembly has resolved that his seat is vacant, or if he withdraws from opposition, then notice of that event must be given in the electoral district, and any person who might have been petitioner in respect of the election may apply to the Court to be admitted as a respondent to oppose the petition. A respondent who has given notice that he does not intend to oppose a petition cannot further appear, and cannot sit or vote in the Legislative Assembly until the Assembly be informed of the report on the petition. If an election petition complains of a double return, and the respondent has given notice that it is not his intention to oppose the petition, and any other person has been substituted, then the petitioner, if there is no petition pending on the other member's return, may withdraw his petition. Upon receipt of that notice the fact is reported to the Speaker and Legislative Assembly and ends the total return. Costs are allowed dependent on the event. An agent found guilty of corrupt

practices may be condemned to pay costs himself. <sup>Double return.</sup> Where an election Court reports that any person named in a report is guilty of corrupt or illegal practices, it is the duty of the county attorney to prosecute that person, unless the Court otherwise directs.

The main feature of the system of the trial of election petitions, is the attempt to prevent fraudulent or collusive proceedings by the friends of candidates, either for or against.

I have now discussed at some length the mode of conducting elections for the Provincial Legislative Assembly. I now have to examine the requirements laid down by the Dominion. <sup>Dominion election laws.</sup>

By the Representation Act the Dominion is divided <sup>R. S. C.</sup> into districts for electoral purposes. These districts <sup>c. 6.</sup> are not those adopted by the province either for municipal or electoral purposes. As the division has been made just as in the case of the province for political purposes, it has also no permanent significance. In both cases it is humiliating to a Canadian to be obliged to confess that juggling with constituencies is a part of the modern politician's stock in trade. Perhaps, as the country grows older, these petty tricks for stifling free expression of opinion on public questions will be laid aside.

## 2. Electoral franchise.

<sup>Franchise.</sup>

Every person is entitled to be registered in any year <sup>R. S. C.</sup> upon the list of voters for the proper polling district of <sup>c. 5.</sup> any electoral district; and when so registered, to vote, if such person is

1. Of the full age of twenty-one years and not disqualified.

2. A British subject.

3. Is the owner of real property within any city or part of a city in the electoral district of the actual value of at least \$300; or within any town or part of a town in the electoral district of the actual value of at least \$200; or in any place in the electoral district other than a city or town of the actual value of at least \$150; or,



4. Is the tenant of any real property within the electoral district under a lease at a monthly rental of at least \$2; or at a quarterly rental of at least \$6; or at a half-yearly rental of at least \$12; or at an annual rental of at least \$20; and has been in possession as tenant for at least one year before his being placed on the list of voters, or his application to be placed on that list, and has really and bona fide paid one year's rent as aforesaid—except when the rental is an annual one, and for a larger sum than \$20, when it is sufficient that at least \$20 of the last year's rent which accrued next before the time mentioned has been paid. A change of tenancy during the year does not deprive the tenant of the right to be registered on the list of voters if the change has been without any intermission of time between the tenancies, and if the several tenancies are such as would entitle the tenant to be registered under any one of them. The rental may be payable in money or coin or in money's worth. If on any revised or final assessment roll the amount of the tenant's rent is not stated, the fact that the real property on which his name is entered as tenant is assessed at \$300 or more, or in towns at \$200 or more, in any place other than a city or town at \$150 or more, is *prima facie* evidence of his right to be registered on the list of voters.

5. Is the bona fide occupant of real property of the above mentioned respective values, provided the person has been in possession as occupant for one year next before his being placed on the list of voters, or the date of the application for the placing of his name on the list of voters, and has been in the enjoyment of the rents and profits of the real property.

6. Is a resident within the electoral district and derives an income of at least \$300 annually from his earnings in money or in money's worth, or partly in money and partly in money's worth, or from some profession, calling, office or trade, or from some investment in Canada, and has derived that income, and has been a resident of Canada for one year before he is placed on the list of voters, or applies to be placed on that list.

7. Is a farmer's son not otherwise qualified to vote in the electoral district in which his father's farm is situated; and (a) if his father is living, is and has been resident within the electoral district continuously with his father for one year before his being placed on the list of voters, or his application to be placed on the list, if the value of the farm is sufficiently and equally divided among the father and one or more sons as to qualify them to be registered as voters; in which case the father and such one or more sons may be registered as voters; if not enough for more than one, then the right goes to the eldest, or so many of the elder of the sons as the value of the farm will justify; (b) if the father is dead and the son has been resident within the electoral district continuously with his father, or with his mother after the death of his father, being the owner of the farm for one year as just explained, in this case the elder sons have the preference in the same way.

8. The son of an owner of real property in the electoral district other than a farm not otherwise qualified to vote on the same conditions *mutatis mutandis* as farmers' sons.

9. A fisherman resident in the electoral district and the owner of real property and boats, nets, fishing gear, and tackle, within the electoral district of the actual value of at least \$150.

10. Is and has been for one year next before being placed on the list of voters or the date of his application to be placed on the list a resident within the electoral district, and in receipt of a life annuity secured on real estate in Canada of at least \$100.

Occasional absence of any farmer's or owner's son for any period not exceeding in all six months in the year does not disqualify that person from being placed on the list of voters. Time spent as a mariner or as a fisherman, or as a student of any institution of learning, is considered as having been spent at the residence of the father or mother as the case may be.

Persons qualified as voters are only entitled to be registered as voters and to vote in the polling district <sup>Registration of voters.</sup>

Revising  
officer.

in which they reside at the time of registration. Persons qualified otherwise than by receipt of income are only entitled to be registered and vote in the polling district in which the real property is situate; if property is within more than one district the voter may choose the district in which he wishes to be registered. Revising officers are appointed who hold office during good behaviour, but who are removed on address by the House of Commons; these officers must revise and complete the list of persons entitled to be registered as voters for any electoral district; they must take an oath of office. A deputy revising officer may be appointed by the Governor in council in case of necessity. In the Province of Ontario any person to be appointed a revising officer must be either a Judge or a junior Judge of a County Court, or a barrister of at least five years' standing. As soon as possible after the first of June in each year the revising officer must cause the list of voters to be compared with the last assessment rolls, and with all the information he can obtain from that or any other source, revise the list of voters for the district for which he is appointed. He prepares two separate supplementary lists, one to be entitled "names to be added and corrections to be made," the other to be entitled "names to be removed." He must enter on the former list the names of all persons not already on the original list who are entitled to have their names entered; he must enter on the latter list the names of all persons whose names appear on the original list and who are dead or who are not entitled to be registered as voters. The assessment rolls are *prima facie* evidence of value and qualification. Declarations as to any person's claiming to vote must be received up to the first day of August, when the revising officer must proceed with the posting and publishing of the lists; after closing and certifying them he must exhibit to any person requiring to examine them these declarations. Immediately after the revising officer has completed and certified these supplementary lists he must sign two of them as revising officer; he must then have them printed by the King's printer. After comparing and correcting his printed copies he

Voters'  
lists.

must post up one copy of the last revised list in his office with a notice appointing a time and place for the final revision of the list; he must also send four copies to the member for the electoral district, and to each unsuccessful candidate at the last election for the electoral district; he must also send to each postmaster a copy of the list of the polling district in which the post office is situate; the postmaster must keep his copy posted up in a conspicuous place in the post office; he must also transmit to the mayor, reeve, deputy reeves, clerk and secretary-treasurer of every municipality two copies of the notice for every polling district comprised within the municipality; these two copies must be posted up in conspicuous places in the municipality; at the same time he must also publish a notice appointing a time and place for the final revision in a newspaper published in the municipality. <sup>Final revision of voters' lists</sup> The time for the final revision must be not less than five weeks after the publication by posting up the list. Each sitting for the final revision must include when practicable at least three and not more than five polling districts. The place for the holding of the final revision shall be in one of the polling districts the lists for which are to be finally revised. Any person who wishes to object to the original list or either of the supplementary lists on the final revision has the right to object to it if at least two weeks before the day fixed for the final revision he sends to the revising officer a notice of objection, complaint or application. The revising officer is bound to exhibit to any person all notices or declarations furnished him. At the time mentioned in the notice he must hold open Court for the final revision and dispose of any objection or complaint; he must hear the parties and any evidence, and must affirm or amend the list and attest with his initials any changes, additions or erasures. If the applicant or complainant does not appear, any other elector may appear in support of the application, or the revising officer himself without any substitution may hear and dispose of the matter himself. No application to add or remove a name can be dismissed on account of error in the name or surname or designation

Final lists.

if the revising officer is satisfied that the application is reasonably certain. If the revising officer finds that the name or qualification of a person is incorrectly entered, but that he possesses the necessary qualification entitling him to be registered, he must retain the person's name, making all necessary corrections. At the conclusion of the revision the revising officer must in open Court give public notice of the time and place when he will proceed to the correction and transcription of the original list. When the lists have been finally revised the revising officer prepares the final list of voters, making all necessary corrections and striking out wrong names. Copies in duplicate of the finally revised and amended lists are then prepared by the revising officer, who retains one copy and forwards the other by registered letter to the Clerk of the Crown in Chancery at Ottawa; the latter official, on receipt of all the lists for any electoral district, publishes a notice of his having received these lists. After the publication of this notice the persons whose names are entered on the list as voters are, subject to any correction or amendment made by any Judge on appeal, held to be duly registered voters for the electoral district. In the event of the appeal which is hereafter described, the lists, after the publication of the notice just mentioned in the Canada Gazette, apply to every election taking place before the appeal has been disposed of, and the result communicated to the returning officer. The list must be finally revised and certified and a duplicate forwarded to the Clerk of the Crown in Chancery at Ottawa on or before the 31st of December in each year. As soon as the lists are received by the Clerk of the Crown in Chancery he must cause them to be printed by the King's printer, and after verification must transmit a sufficient number of printed copies to each revising officer; four copies of this final list must be sent by the revising officer to each member of the House for the electoral district, and one copy to each unsuccessful candidate at the last preceding election. After the lists of voters have been so finally revised, or amended and corrected on appeal, if appealed, and after they have

been certified and until the other lists are in a future year revised, those persons only whose names are entered upon those lists are entitled to vote at elections. The lists are binding on every Judge or other tribunal appointed for the trial of any election petition. There is an appeal from the revising officer to the County Court Judge; any person who is dissatisfied may give notice in writing within three days from the date of the decision of his intention to appeal, stating in the notice the decision complained of and at least one reason for appealing against it. A copy of the notice must be served upon the person in whose favour the decision was given; the revising officer must forthwith after receiving the notice transmit it with a copy of his decision to the County Court Judge, and the decision must be signed by the revising officer. The Judge appoints a time and place for the hearing of the appeal, and notice is given requiring an alteration to be made in the certified list, to the revising officer and to the parties interested. The appeal is dealt with by the Judge, and his decision is subject to no further appeal. If a judgment is rendered requiring an alteration, a copy of the order must be forthwith served upon the revising officer as the Judge orders.

Appeal  
from  
revising  
officer.

The revising officer has all the powers of any Court of record as to compelling the attendance of witnesses, their examination, the production of books and documents, and the taking of evidence under oath; he may issue a summons directing the attendance of witnesses under the same penalties as a subpoena issued by any Court. Powers of amendment and of adjournment and summary proceeding are given him so that he may do justice to all parties concerned according to the best of his judgment. Parties may appear by solicitor, counsel or agent. Notwithstanding appeals pending, lists which are certified serve for the election with respect to which they are furnished; when decided, the lists must be corrected. If the decision in appeal is notified to the revising officer before the day of polling a duly certified copy of the corrected list must be furnished by the revising officer to the returning officer containing

Powers of  
revising  
officer.

the corrections; in this case, the election takes place upon the corrected list if received in time by the deputy returning officer. Any person may obtain copies of the lists from the revising officer, Clerk of the Crown in Chancery or the King's printer, on paying for them. If from any cause the list of voters for any polling district is not revised and certified at the time required by law, then the last list of voters revised and certified must be sent to the returning officer and must be used at the election. Persons guilty of wilful misfeasance or wilful acts of commission or omission are liable to a fine of \$500, as well as the punishment inflicted for disobedience to an Act of Parliament.

Polling  
districts.

Revising officers have power to divide electoral divisions into polling districts; this may be done whenever the number of voters in any polling district increases so as to exceed three hundred, or whenever the revising officer considers that the convenience of the voters would be promoted by a new and different sub-division. The revising officer must publish his order directing these divisions by posting a copy of it up in each polling district. The polling districts must be numbered and a separate list of voters' copies prepared for each.

Dominion  
elections.  
R. S. C.  
c. 8.

Elections for members of the House of Commons are conducted in very much the same manner as those of the Provincial Legislature; these elections are by ballot, though the form of ballot is different in design and colour, and the duties of returning officers and deputy returning officers are very much the same in both cases. Secrecy of voting and prevention of corrupt practices are provided for in the Dominion Act as well as the provincial. A writ for the election of a member of the House of Commons is dated and returnable on such days as the Governor-General determines; it is addressed to such person as the Governor-General appoints. Certain persons are not allowed to act as election officers: members of the King's Privy Council for Canada, or of any Provincial Executive Council, members of the Senate or of the Legislative Council of any of the provinces, members of the House of Commons or of the Provincial



Legislative Assemblies, ministers, priests or ecclesiastics, judges, persons who served in the last Parliament, or in the then present session of Parliament, sheriffs, registrars and persons who have been found guilty by the House of Commons or by any Court for the trial of controverted elections of any offence against the election law. Certain persons are exempted from acting as election officers: professors, physicians or surgeons, millers, postmasters, customs officers, post office clerks, persons of sixty years of age and upwards, persons who have previously served as returning officers at the election of a member for the House of Commons. No qualification in real estate is required of any candidate for a seat in the House of Commons, but the candidate must be either a natural born subject of the King or naturalized. No revising officer while he is revising officer, or for two years afterwards, can be a candidate for the district in which he was revising officer. Twenty-five electors may nominate a candidate; the nomination must be accompanied by \$200 as a deposit; this deposit is returned in case the candidate is elected, or if he obtains a number of votes at least equal to one-half of the number of votes polled in favour of the candidate elected; otherwise it is forfeited. The money paid, if forfeited, is applied towards payment of the election expenses. A poll is granted in the same way as in provincial elections. The poll is kept open from nine in the morning till five in the afternoon. The persons who are entitled to vote have already been mentioned in the last section; the persons who are not entitled to vote are judges whose appointments rest with the Governor-General; revising officers, returning officers, election clerks, any person employed as counsel, attorney, solicitor, agent or clerk at any polling place at the election, or who has received or expects to receive any bribe or promise of office, place or employment. The returning officer has a vote in case of an equality between candidates; deputy returning officers, poll clerks or constables may vote. Within four days after the returning officer has made the final addition of the votes for the purpose of declaring who is elected, an application may be made to the Judge of

Nomina-  
tion.

Poll.

Persons  
who may  
not vote.

Recount. the County Court for a re-count. The provisions for a re-count are the same practically as those of the Provincial Act. If it is proved on the trial of any election petition that any corrupt practice has been committed by and with the actual knowledge and consent of any candidate at an election, or if he is convicted before any competent Court of misdemeanor, of bribery or undue influence, he is held guilty of corrupt practices, and his election, if he has been elected, is void. During the seven years next after the date of his having been proved or found guilty he is incapable of being elected to or of sitting in the House of Commons, or of voting at any election of a member of the House of Commons, or of holding any office in the nomination of the Crown or of the Governor-General in Canada. Any person other than a candidate found guilty of any corrupt practice, is during the eight years next after he is found guilty, incapable of being elected to and sitting in the House of Commons, and of voting at any election of a member of the House of Commons, or of holding any office in the nomination of the Crown or of the Governor-General in Canada. A detailed statement of all election expenses incurred by or on behalf of the candidate must within two months after the election, or if by reason of the death of a creditor no bill has been sent in within two months, then within one month after the bill has been sent in be made up and signed by the agent of the candidate; the returning officer must, at the expense of the candidate, within fourteen days publish a statement of these expenses. Any executory contract or promise or undertaking in any way referring to or arising out of, or depending upon any election, even for the payment of lawful expenses, or the doing of some lawful act, is declared void in law.

Trial of  
contro-  
verted  
Dominion  
elections.

R. S. C.  
c. 9.

In the Province of Ontario the Court for the trial of controverted Dominion elections is the High Court of Justice for Ontario. Petitions complaining of undue return or undue election, or no return, or a double return, or of any unlawful act by any candidate not returned by which he is alleged to have become disqualified to sit in the House of Commons, may be presented to

the Court. Provisions similar to those of the Provincial Controverted Elections Act have been made as to preliminary examination of parties, production of documents, trial of petitions and reports of Judges; an appeal lies to the Supreme Court of Canada. Provisions are made to prevent the fraudulent withdrawal of election petitions, and for continuing them in case of abatement by death of either petitioner or respondent or any other event. If, on the trial of an election petition, it is determined that any person has been guilty of a corrupt practice, or if on the trial there is in the opinion of the Judge sufficient evidence available that any person ~~has~~ been guilty of corrupt practice to warrant his being put on his trial the Judge may fix the time and place for the investigation. The trial must be held not more than thirty days from the date of the summons, and the place must be the nearest convenient court house or other available room; the person may be bound by recognizance to appear to be tried. The Judge tries the accused and gives judgment according to the case; in case of a conviction of corrupt practice, the offender must be sentenced to imprisonment in any gaol for a term not exceeding three months, with or without hard labour, and to a fine not exceeding \$200, and to pay the costs of the prosecution. If the fine and costs are not paid before the expiration of the three months, then to imprisonment for such further time as they remain unpaid not exceeding three months.

Commissions may be issued by the Governor-General for making inquiry into the existence of corrupt practices at elections under the following circumstances :

Commissions to enquire into corrupt practices,

1. Whenever the House of Commons by address represents to the Governor-General that a Judge in his report on the trial of an election petition states that corrupt practices have, or that there is reason to believe that corrupt practices have extensively prevailed at the election, or that he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry is desirable.

R. S. C.  
c. 10.

2. Whenever the House of Commons by address represents to the Governor-General that a petition has been presented to the House of Commons signed by twenty-five or more electors of a district, stating that no petition charging the existence of corrupt practices has been presented, but that corrupt practices have, or that there is reason to believe that corrupt practices have extensively prevailed at the election, accompanied by a solemn declaration in that behalf signed by the petitioners, and when in either case the House of Commons prays the Governor-General to cause an inquiry to be made for the investigation of the facts.

The commissioners may be one or more Judges of the Supreme Court of Canada or of the High Court of Justice, or a person named in the address being a County Court Judge, or a barrister-at-law of not less than seven years' standing, not holding any office or place of profit under the Crown. Inquiry is made by the commissioners, who take evidence and furnish a report. Whenever it appears by their report that any person named by them has been guilty of a corrupt practice and has not been furnished with a certificate of indemnity, the Attorney-General of Canada must state whether he considers there is sufficient evidence available for a prosecution; the Secretary of State must thereupon communicate the report with the evidence to the Lieutenant-Governor of the province in which the election was held, and the prosecution must be instituted by the local authorities charged with the administration of justice. A deposit is required of \$1,000 to meet the expenses of the investigation. If the petition was well founded, and it is reported that corrupt practices extensively prevailed within the electoral district at the election, the deposit is returned, otherwise it is applied towards the expenses.

Conclu-  
sion of  
summary  
of election  
laws.

I have now reached the conclusion of my synopsis of the laws relating to the elections in the Dominion and the province. The main objects in both systems are the same. They both aim at secrecy in voting and drastic punishment of corrupt practices at elections. Undue

influence is thus (I wish the depravity of mankind would let me say effectually) guarded against. But after reading the account of the elaborate provisions to prevent corruption of voters already made, and remembering that in almost every session of the Legislature further provisions are added thereto, it makes the student almost come to the conclusion that a disease which requires such intricate remedies must be too deeply seated to be cured by paper legislation. The true remedy lies with the electors themselves. If they bear in mind that when they sell their votes they sell their country, or, what affects them more, their own liberty, they will learn to refuse offers made them by politicians who, having everything to gain and nothing to lose, sacrifice their native country and their fellow-subjects for their own selfish advancement.

In consequence of the importance of this law relating to elections I have been obliged to devote considerable space to its examination. All I have been able to do is to gather the substantial particulars. Many points of detail have been omitted. I trust sufficient has been done by presenting a connected account of the various steps, from the preparation of the voters' list to the final decision of a contested election, to enable the reader to trace them intelligently. I leave the subject in the reader's hands, with the suggestion whether it would not be advisable in the interests of the country to harmonize the electoral legislation of the Dominion and the province. The number of members from Ontario in the Dominion is different from the number of members in the Local Legislature. The electoral divisions for the House of Commons are different from those in the Legislative Assembly. The qualifications for voters are different. Instead of uniformity there is diversity. If one standard were adopted for voters in Dominion and provincial elections great simplification and saving of expense would result. The most reasonable plan would seem to be to allow each province to settle electoral matters for itself, and then the Dominion could adopt the provincial system for Dominion purposes. The franchise throughout the Dominion would

not be identical, but the members returned from each province to the House of Commons would just as truly represent the public opinion of the province as under the present double system, with its enormous expense and trouble.

There yet remains\* the subject of the peculiar laws and customs of Parliament, which will conclude our examination of the subject of the supreme magistracy of the Dominion and province.

Peculiar  
laws and  
customs of  
parliament

IV. The privileges of peculiar laws and customs of the Senate are confined to adjudicating upon questions of divorce. The Senate is necessary as a check upon the legislation of the House of Commons. That body, being more directly democratic, is more liable to be misled, and in many cases absolutely deceived in matters of private legislation. In such cases the interference of the Senate is beneficial and is actively exercised.

V. The peculiar laws and customs of the House of Commons relate principally to the raising of taxes. It is the ancient, indisputable privilege and right of the House of Commons, that all grants of subsidies or parliamentary aids do begin in their House, and are first bestowed by them; although their grants are not effectual, to all intents and purposes, until they have the assent of the other two branches of the Legislature.

It has already been stated that in the Dominion House a bill for these purposes must be preceded by a message from the Governor-General recommending its introduction; the same right of granting supplies for provincial purposes is vested in the Ontario Legislature, but must be preceded by a message from the Lieutenant-Governor.

The Statutes of the Dominion and Province relating to matters discussed in the preceding section with their amendments are now set out.

\* See page 53: I. Manner and time of assembling of Parliament; II. Constituent parts of Parliament—page 54; III. Laws and customs of Parliament, page 173.

*Supreme Magistrates—DOMINION (Revised Statutes 1886.)*

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- 55..Governor General—c. 3.  
 95 n.High Commissioner for Canada—c. 16, 1887 c. 16; 1888 c. 13.  
 66..Civil Service—c. 17, 1888 c. 12; 1889 c. 12; 1892 c. 14; 1894 c. 18; 1885 cc. 14, 15.  
 66..C. S. Superannuation—c. 18, 1888 c. 7; 1893 c. 12.  
 66..Public Officers' Act—c. 19, 1887 c. 9; 1893 c. 14.  
 66..Department of Justice—c. 21, 1887 c. 14.  
 67..Department of the Interior—c. 22, 1890 c. 11; 1892 c. 16.  
 67..Department of Agriculture—c. 24, 1887 c. 12.  
 67..Department of Marine and Fisheries—1892, c. 17.  
 69..Department of Secretary of State—c. 26; c. 27, 1888 c. 17; 1893 c. 15.  
 69..Department of Finance—c. 28, 1887 c. 13.  
 70..Department of Customs—c. 32, 1887 c. 11; 1888 c. 14; 1889 c. 14; 1891 c. 44; 1892 c. 29; 1894 c. 33; 1895 c. 22.  
 70..Department of Inland Revenue—c. 34, 1887 c. 11; 1888 c. 16; 1889 cc. 15, 19; 1890 c. 23; 1891 cc. 32, 46; 1892 cc. 22, 29; 1894 c. 35; 1895 c. 25.  
 70..Department of Post Office—c. 35, 1888 c. 8; 1892 c. 29; 1894 c. 54.  
 70..Department of Public Works—c. 36, 1889 c. 19; 1895 c. 36.  
 71..Department of Railways and Canals—c. 37, 1889 c. 19.  
 72..Department of Militia and Defence—c. 41, 1892 c. 29.  
     R. M. College—c. 42, 1892 c. 6; 1893 c. 17.  
 72..Department of Trade and Commerce—1887 c. 10.

*PROVINCE (Revised Statutes 1887.)*

- 57..Lieutenant-Governor—c. 12, 1888 c. 5.  
 61..Executive Council—c. 13, 1888 c. 8.  
 65..Public Service—c. 14.  
 65..Public Officers—c. 15.  
 66..Public Enquiries—c. 17.

*King's Prerogative (Dominion.)—R. S. C.*

- 98..Weights and Measures—c. 104, 1887 c. 37; 1888 c. 25; 1889 c. 17; 1891 c. 47.  
 99..Currency—c. 30.

*King's Revenue in the Dominion.—R. S. C.*

- 123..Consolidated Revenue—c. 29, 1888 cc. 2, 7; 1891 c. 16; 1894 c. 19.  
 124..Subsidies—c. 46.  
 132..Dominion Notes—c. 31, 1894 c. 21 (repealed by 1895 c. 16, R. S. C. c. 31, reinstated.)  
 133..Customs Duties—1894 c. 33; 1895 c. 29; 1896 c. 3.  
 137..Excise—c. 34 (see above.)  
 141..Government Railways—c. 38, 1887 cc. 16, 18, 27; 1891 c. 50; 1892 c. 29.  
     Expropriation of Lands—1889 c. 13.  
 143..Public Lands—c. 54, 1887 c. 31; 1888 c. 21; 1889 c. 27; 1891 c. 24; 1892 c. 15; 1893 c. 19; 1894 c. 26; 1895 c. 34 (amending 1889 c. 27.)  
 143..Ordnance and Admiralty Lands—c. 55.  
 143..Fisheries—c. 95, 1889 c. 24; 1891 c. 43; 1894 c. 51; 1895 c. 27.  
 144..Ferries—c. 97, 1888 c. 23.

Patents, Copyrights, Banks and Pawnbrokers are referred to more fully later on.



## PAGE.

- 144..Government Savings Banks—c. 121, 1888 c. 8.  
 145..Fines and Forfeitures—Code 1892, secs. 927 to 930.

*King's Revenue in the Province—R. S. O.*

- 147..Consolidated Revenue Fund—c. 19.  
 147..Collection of Revenue—c. 20.  
 148..Auditing Public Accounts—c. 21.  
 149..Law Stamps—c. 22.  
 149..Public Lands—c. 24, 1891 c. 7; 1896 c. 7.  
 149..Free Grants—c. 25, 1889 c. 7; 1890 c. 6.  
     See Algonquin National Park Act, 1893 c. 8; 1896 c. 9.  
 152..Timber on Public Lands—c. 28, see 1890 cc. 7, 8; 1896 c. 12.  
 153..Trespasses on Public Lands—c. 29, 1891 c. 16.  
 153..Mines—1892 c. 9; 1894 c. 16; 1896 c. 13.  
 156..Fisheries—c. 32, 1892 c. 10.  
 156..Public Works—c. 33.  
 158..Drainage Act—c. 36; 1894 c. 56; 1896 c. 66.  
 158..Municipal Drainage—c. 37,  
     Tile and Stone Drainage—c. 38, 1890 c. 11; 1895 c. 9.  
 160..Escheats—c. 95.  
 160..Crown Bonds—c. 94.  
 161..Ferries—c. 117.  
 161..Estreats—c. 88.  
 162..Fines and Penalties—c. 89.  
 163..Remission of Fines—c. 90.  
 163..Succession Duties—1892 c. 6; 1895 c. 7; 1896 c. 5.

*Representation in the Legislative Assembly—R. S. O.*

- 170..Legislative Assembly—c. 11, 1889 c. 2; 1895 c. 4.  
 180..Representation—c. 7, 1889 c. 2; 1894 c. 2.  
 183..Voters' Lists—1889 c. 3; 1891 c. 5; 1893 cc. 2, 3; 1894 c. 3.  
 188..Manhood Suffrage—1888 c. 4; 1889 c. 5; 1890 c. 2; 1894 cc. 4, 7; 1895 c. 3.  
 194..Election Act—1892 c. 3; 1894 cc. 5, 6, 28; 1895 c. 4.  
 205..Controverted Elections—c. 10, 1891 c. 6; 1895 c. 4.

*Representation in Parliament—R. S. C.*

- 167..Senate and House of Commons—c. 11, 1889 cc. 10, 11; 1891 c. 21; 1892 c. 13; 1893 c. 11; 1894 c. 10; 1895 c. 9; 1896 c. 7.  
 168..Speaker, Senate—1894 c. 11.  
 171..House of Commons—c. 13, 1889 cc. 10, 11.  
 176..Speaker, House of Commons—c. 14.  
 209..Electoral Franchise—c. 5, 1887 c. 5; 1888 c. 9; 1889 c. 9; 1890 c. 8; 1891 c. 18; 1892 c. 12; 1893 c. 10.  
 209..Representation Act—c. 6, 1887 c. 4; 1892 c. 11; 1893 c. 9; 1894 c. 12; 1895 c. 10; 1896 c. 6.  
 216..Dominion Elections Act—c. 8, 1887 c. 6; 1888 c. 11; 1890 c. 9; 1891 c. 19; 1894 c. 13; 1895 c. 13.  
 218..Controverted Elections—c. 9.  
 219..Corrupt Practices at Elections—c. 10.

We have now reached the close of the consideration of the supreme magistracy, and proceed to those of lower rank, for

It will have been seen that magistrates can be distinguished into two kinds: Supreme, or those in whom the sovereign power of the state resides; and subordinate, or those who act in an inferior secondary sphere. We have hitherto considered the former kind only, namely, the supreme legislative power of Parliament, and the supreme executive power, which is the King, and are now to proceed to inquire into the rights and duties of the principal subordinate magistrates.

And herein we are not to investigate the powers and duties of the King's great officers of state, who in England are the Lord Treasurer, Lord Chamberlain, the principal secretaries, or the like; because I do not know that they are in that capacity in any considerable degree the objects of our laws, or have any very important share of magistracy conferred upon them, except that the Secretaries of State are allowed the power of commitment, in order to bring offenders to trial. Neither shall I here treat of the office and authority of the Judges of the superior Courts of justice. Nor shall I enter into any minute disquisition with regard to the rights and dignities of mayors and aldermen, or other magistrates of particular corporations, because they are mere private and strictly municipal rights, depending entirely upon the constitution of their respective franchises. But the magistrates and officers, whose rights and duties it will be proper in this place to consider, are such as are generally in use, and have a jurisdiction and authority dispersedly throughout the province, which are, principally sheriffs, coroners, justices of the peace, police magistrates, county attorneys and constables.

All these officials, except the last named, are appointed by the Lieutenant-Governor and hold office during pleasure.

Sheriffs.

First, as to sheriffs.

We shall find it of the utmost importance to have the sheriff appointed according to law, when we consider his power and duty. These are either as the keeper of the King's peace, as a ministerial officer of the superior Courts of justice, or as the King's bailiff.

As the keeper of the King's peace, both by common law and special commission, he is in England the first man in the county, and superior in rank to any nobleman therein, during his term of office. He may apprehend and commit to prison all persons who break the peace, or attempt to break it, and may bind any one in a recognizance to keep the King's peace. He may, and is bound *ex officio* to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the King's enemies when they come into the land: and for this purpose, as well for keeping the peace and pursuing felons, he may command all the people of his county to attend him: which is called the "*posse comitatus*" or power of the county; and this summons every person above fifteen years old, and under the degree of peer, is bound to attend upon warning, under pain of fine and imprisonment.\* But though the sheriff is thus the principal conservator of the peace in his county, yet by the express direction of the great charter, he, together with the constable, coroner, and certain other officers of the King, are forbidden to hold any pleas of the Crown, or, in other words, to try any criminal offence. For it would be highly unbecoming that the executioners of justice should be also the judges; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next. Neither may he act as an ordinary justice of the peace during the time of his office: for this would be equally inconsistent; he being in many respects the servant of the justices.

In his ministerial capacity the sheriff is bound to execute all process issuing from the King's Courts of

55 Vict. c.  
42, s. 478.

\* The mayor of a city has the same power as a sheriff to call out the *posse comitatus*.

*Posse  
comitatus.*

justice. In the commencement of civil causes, he is to serve the writ, to arrest, and to take bail; when the cause comes to trial, he must summon and return the jury: when it is determined, he must see the judgment of the Court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury, he has the custody of the delinquent, and he executes the sentence of the Court, though it extends to death itself.

As the King's bailiff, it is his business to preserve the rights of the King within his bailiwick; for so his county is frequently called in the writs: a word introduced by the princes of the Norman line; in imitation of the French, whose territory was divided into bailiwicks, as that of England into counties. He must seize to the King's use all lands devolved to the Crown by attainder or escheat; must levy all fines and forfeitures; must seize and keep all waifs, wrecks, estrays, and the like, unless they be granted to some subject; and he has also to collect the King's rents within the bailiwick, if commanded by process.

To execute these various offices, the sheriff has under him many inferior officers; as under-sheriffs, bailiffs, and gaolers; who must neither buy, sell, nor farm their offices, on penalty of forfeiture of £500.

The under-sheriff usually performs all the duties of the office; a very few excepted, where the personal presence of the high sheriff is necessary. He must be appointed within one calendar month after the sheriff is himself appointed. And no under-sheriff or sheriff's officer can practice as a solicitor during the time he continues in such office: for this would be a great inlet to partiality and oppression. It is to be remembered that the under-sheriff is the general deputy of the sheriff, without showing any special authority.

Bailiffs, or sheriff's officers, are either bailiffs of hundreds, or special bailiffs. Bailiffs of hundreds in England are officers appointed over those respective districts by the sheriffs, to collect fines therein; to summon juries; to attend the Judges and justices at the assizes and quarter sessions; and also to execute writs and pro-

cess in the several hundreds. But, as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving writs and making arrests and executions, it is now usual in England to join special bailiffs with them, and in Ontario bailiffs are in practice "special"; who are generally persons employed by the sheriffs on account only of their adroitness and dexterity in hunting and seizing their prey.

Bound  
bailiffs.

The sheriff being answerable for the misdemeanours of these bailiffs, where their acts can be connected with the sheriff, they are therefore usually bound in an obligation with sureties for the due execution of their office, and thence are called bound-bailiffs; which the common people have corrupted into a much more homely appellation.

Gaolers.

Gaolers are also servants of the sheriff, and he must be responsible for their conduct. Their business is to keep safely all such persons as are committed to them by lawful warrant: and if they suffer any such to escape, the sheriff shall answer it to the King if it be a criminal matter, or, in a civil case, to the party injured. And to this end the sheriff must have lands sufficient within the county to answer the King and his people. The abuses of gaolers and sheriff's officers, towards the unfortunate persons in their custody, were well restrained and guarded against by 32 Geo. II. c. 28,\* and by statutes 14 Geo. III. c. 59, and 24 Geo. III. c. 54, provisions were made for the better preserving the health of prisoners, and preventing the gaol distemper. In the Dominion several statutes have been passed affecting gaols to which attention should be directed. In Ontario the sheriff has the care of the county gaol and its appurtenances, and appoints the gaoler, subject to the approval of the Lieutenant-Governor. The salary of the gaoler is fixed by the county council, subject to revision by the Inspector of Prisons and Public Charities.

32 Geo. II.  
c. 28.

14 Geo.  
III. c. 59.

24 Geo.  
III. c. 54.

55 Vict. c.  
42, sec. 464

Sheriff's  
retinue.

The vast expense, which custom had introduced in serving the office of high sheriff, was grown such a burden to the subject, that it was enacted, by statute

\* This statute is specially repealed by 55 Vict. c. 15 (Ont.)

13 & 14 Car. II. c. 21, that no sheriff (except of London, <sup>13 & 14</sup> Westmoreland, and towns which are counties of them- <sup>Car. II. c.</sup> selves) should keep any table at the assizes, except for <sup>21.</sup> his own family, or give any presents to the Judges or their servants; or have more than forty men in livery: yet, for the sake of safety and decency, he may not have less than twenty men in England and twelve in Wales; upon forfeiture in any of these cases of £200. Sheriffs <sup>R. S. O.</sup> in Ontario are appointed under the Great Seal of the <sup>c. 16.</sup> province. Every sheriff must take the oath of allegiance, and also an oath of office that he will faithfully perform his duties, and that he has not in any way bought the office. Security is required for the proper fulfilment of his duties; additional security may be required, and a sheriff must give notice of the death, discharge, bankruptcy, insolvency, or residence out of the province of any surety or person bound for him within one month after the fact comes to his knowledge, and a new surety must be appointed. Any person who sustains damage by reason of any default or misconduct of the sheriff may bring an action for such default or misconduct, and the sureties are liable to indemnify the party. No sheriff or deputy sheriff can directly or indirectly keep a shop or trade, or traffic or sell, either by wholesale or retail, or maintain an action for the price of any goods sold, except such as by the duties of his office he is legally commanded or empowered to sell. No sheriff, deputy sheriff, bailiff, or constable, can buy any goods or chattels or lands exposed by him to sale under execution. If any bailiff or constable entrusted with the execution of any writ wilfully misconducts himself, or wilfully makes a false return, he, on conviction, may be fined or imprisoned in the discretion of the Court. If a debtor in execution escapes out of legal custody, the <sup>Escapes.</sup> sheriff or other person having the custody of the debtor is liable only to an action for damages sustained by the person or persons at whose suit the debtor was taken or imprisoned, and is not liable to any other action in consequence of the escape. If a sheriff wilfully makes any false return upon an execution, he is liable to forfeit his office. On the delivery of a writ of summons to a

Service of writ of summons. sheriff, he or his deputy must indorse on the writ the time it was delivered. If the writ is not served within ten days the plaintiff is entitled to receive the writ back, and the sheriff must indorse the time of delivery; the costs then of the mileage and service of the writ afterwards must, if the person to be served was at any time during the ten days within the county, be allowed as if the service had been made by the sheriff. If a sheriff, on being applied to for a writ, neglects or refuses to return it, the plaintiff may issue a duplicate or concurrent writ and recover the costs of this second writ against the sheriff. Sheriffs must keep their office open every day, except during vacations and holidays, from ten in the forenoon until four in the afternoon. During the vacations the office may be closed at one o'clock in the afternoon. The sheriffs of York and Toronto are allowed to close on Saturdays at one o'clock. Sheriffs must execute and return before the Judge or Judges assigned to hold the assizes, or execute any commission, or hold any Court of Assize and Nisi Prius, or of Oyer and Terminer and Gaol Delivery all process, and attend the Court to return extra jurymen required and maintain good order in Court. If a sheriff dies or resigns his office, or is removed, the deputy sheriff continues the office of sheriff until a new sheriff is appointed. If a sale for taxes has been made, the conveyance must be made by the sheriff or by the deputy sheriff who may be acting as sheriff.

## Coroner.

II. The coroner's is also a very ancient office at the common law. He is called coroner, coronator, because he has principally to do with pleas of the Crown, or such wherein the Queen is more immediately concerned. And in this light the Lord Chief Justice is in England the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. This office is of equal antiquity with that of sheriff; and was ordained together with him to keep the peace when the earls gave up the wardship of the county.

The office and power of a coroner are also, like those of the sheriff, either judicial or ministerial; but princi-



pally judicial. This is in a great measure ascertained by statute 4 Edw. I., "*de officio coronatoris*"; and consists, first, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death. And this must be "*super visum corporis*"; for if the body be not found, the coroner cannot sit. And it is indispensable that the coroner and jury shall have together a view of the body, the latter having first been sworn in by the former. By the common law the coroner was to sit at the very place where the death happened, but this is now no longer necessary; and his inquiry is made before a jury of from four, five, or six of the neighbouring towns, over whom he is to preside; of whom twelve at least must concur in the finding of the inquisition. If any be found guilty by this inquest of murder or other homicide, he is to commit them to prison for further trial, and is also to inquire concerning their lands, goods, and chattels, which are forfeited thereby; but, whether it be homicide or not, he must have inquired whether any deodand\* (when such existed) had accrued to the King, or the lord of the franchise, by this death: and must certify the whole of this inquisition (under his own seal and the seals of the jurors), together with the evidence thereon, to the Court of Queen's Bench, or the next assizes. But a deodand, when it existed, could not be imposed by a coroner's jury upon the instrument of death, when they found the homicide had been felonious. Another branch of this office is to inquire concerning shipwrecks; and certify whether wreck or not, and who is in possession of the goods. Concerning treasure-trove, he is also to inquire who were the finders, and where it is, and whether anyone be suspected of having found and concealed a treasure, "and that may be well perceived (says the old statute of Edw. I.) where one liveth riotously, haunting taverns, and has done so of long time": whereupon he might be attached, and held to bail, upon this suspicion only.

\* Deodand—Anything which caused a person's death and became thereby unfit for further human use was to be surrendered to God—*Deodandum*. Abolished.

59 Vict.  
c. 25.

A coroner's Court, it is now held, is not an open Court. Jurors at coroners' inquests are now entitled to fees.

The ministerial office of the coroner is only as the sheriff's substitute. For when just exception can be taken to the sheriff, for suspicion of partiality (as that he is interested in the suit, or of kindred to either plaintiff or defendant), the process must then be awarded to the coroner, instead of the sheriff, for execution of the King's writs. And where the coroner neglects his ministerial duty, elisors will be appointed to execute the process and attach the coroner.

R. S. O.  
c. 80.

Inquests by coroners in Ontario, upon deceased persons, are now held only when it has been made to appear to the coroner that there is reason to believe that the deceased died from violence or unfair means, or by supposed suicide, and not from accident or mischance. No fees are claimable except in cases upon the written request of the County Attorney, unless prior to the issuing of his warrant, the coroner makes a declaration that there is reason for believing that there has been violence or foul play. If a coroner has issued a warrant for an inquest, believing it to be necessary, but afterwards finds it not necessary, he may recall his warrant and issue a warrant to bury, for which he is allowed a fee of five dollars. Inquests in case of destruction of buildings by fires are also held by a coroner where there is ground for supposing that the fire was the result of culpable accident or design, or that in the public interest an investigation is necessary. The parties requiring such an investigation must pay the expenses attending it.

R. S. O.  
c. 217.

Justices of  
the peace.

R. S. O.  
caps. 71,  
73, 76, 78.

III. The next species of subordinate magistrates whom I am to consider are justices of the peace; the principal of whom is in England the "*custos rotulorum*," or keeper of the records of the county. The common law has ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of civil society. And, therefore, before the present constitution of justices was invented, there

were peculiar officers appointed by the common law for the maintenance of the public peace. Of these some had, and still have, this power annexed to other offices which they hold; others had it merely by itself, and were thence named "custodes" or "conservatores pacis." Those that were so *virtute officii* still continue; but the latter sort are suspended by the modern justices. The King's Majesty is by his office and dignity royal, the principal conservator of the peace within all his dominions, and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the King's peace. In England the Lord Chancellor or Keeper, the Lord Treasurer, the Lord High Steward of England, the Lord High Constable of England (when any such offices are in being), and all the Justices of the Court of Queen's Bench (by virtue of their offices), and the Master of the Rolls (by prescription), were generally conservators of the peace throughout the whole kingdom, and might commit all breakers of it, or bind them in recognizances to keep it; the other Judges are only so in their own Courts. The coroner is also a conservator of the peace within his own county, as is also the sheriff, and both of them may take a recognizance of security for the peace. Constables, tithing-men, and the like, are also conservators of the peace within their own jurisdictions, and may apprehend all breakers of the peace and commit them till they find sureties for their keeping it.

As the office of these justices is conferred by the Lieutenant-Governor, representing the Executive, so it subsists only during his pleasure, and is determinable: How office determinable.  
1. By the demise of the Crown, that is, in six months after. But if the same justice is put in commission by the successor, he shall not be obliged to sue out a new *dedimus*, or to swear to his qualification afresh; nor, by reason of any new commission, to take the oaths more than once in the same reign.\* 2. By express writ under the Great Seal, discharging any particular per-

\* As the appointment of Justices of the Peace is a matter of prerogative, it is doubtful whether their commissions do not terminate with the decease of the Sovereign. See R. S. O. c. 15, s. 2.

son from being any longer justice. 3. By superseding the commission by writ of supersedeas, which suspends the power of all the justices, but does not totally destroy it; seeing it may be revived again by another writ, called a *procedendo*. 4. By a new commission, which virtually, silently, discharges all the former justices that are not included therein; for two commissions cannot subsist at once. 5. By accession of the office of sheriff or coroner. Formerly it was thought that if a man was named in any commission of the peace, and had afterwards a new dignity conferred upon him, that this determined his office; he no longer answering the description of the commission; but now it is provided that, notwithstanding a new title of dignity, the justice on whom it is conferred shall still continue a justice.

The *ex officio* Justices of the Peace in Ontario are the Judges of the Supreme Court of Canada, of the Exchequer Court, and of the Supreme Court of Judicature for Ontario. The head of every council and the reeve of every town, township or incorporated village are also justices of the peace *ex officio*, and also aldermen in cities.

The property qualification for a justice of the peace in Ontario is the possession of land or leaseholds, not less than twenty-one years, of, or above the value of twelve hundred dollars, beyond incumbrances. It must be remembered that no solicitor can be a justice of the peace and continue to practice as solicitor.

Commis-  
sion of  
justice of  
the peace.

The power, office and duty of a justice of the peace depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission, first, empowers him singly to conserve the peace, and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other inferior criminals. It also empowers any two or more to hear and determine indictable and other offences; which is the ground of their jurisdiction at Sessions. In England licensing ale-houses, and the appointment

of overseers and surveyors of the highways, also formed part of their varied duties. And as to the powers given to one, two or more justices by the several statutes, which from time to time have heaped upon them such an infinite variety of business, so that few care to undertake, and fewer understand the office; they are such and of so great importance to the public, that the country is greatly obliged to any worthy magistrate that, without sinister views of his own, will engage in this troublesome service. And, therefore, if a well-meaning justice makes any undesigned slip in his practice, great lenity and indulgence are shown him in the Courts of law, and there are many statutes made to protect him in the upright discharge of his office; which, among other privileges, prohibit such justices from being sued for any oversights without notice beforehand; and stop all suits begun, on tender made of sufficient amends. But, on the other hand, any malicious or tyrannical abuse of their office is usually severely punished, and all persons who recover a verdict against a justice for any wilful or malicious injury are entitled to double costs. Justices are allowed fees and must report all convictions. Other subordinate magistrates are police magistrates and county Crown attorneys. Police magistrates have authority when appointed in cities and towns to do alone what may be done by any two justices of the peace, and may also try prosecutions for offences against by-laws, and for penalties for refusing to accept municipal office or to make necessary declarations of qualification and office. In cities and towns the council must establish a police office, and the police magistrate must attend there every lawful day. In cities with over 40,000 inhabitants a deputy police magistrate may be appointed. In all cities a second police magistrate may be appointed on a two-thirds vote of the council requesting such appointment.

Police  
magis-  
trates.

R. S. O.  
c. 72.

55 Vict. c.  
42, secs.  
432, 433.

57 Vict. c.  
29.

52 Vict. c.  
10, sec. 8.

A county Crown attorney is appointed in each county of Ontario. His duties are to superintend the business of the Sessions; examine informations; institute

County  
Crown  
Attorney,  
R. S. O.  
c. 79.

prosecutions at the Sessions; conduct summary proceedings before justices of the peace where the public revenue is concerned, and, finally, advise the justices of the peace in respect to criminal offences brought before them.\*

Commissioners of police.

R. S. O.  
c. 81.

Commissioners of police are appointed by the Dominion, and are given the same powers in Ontario by the province as have police magistrates and justices of the peace.

55 Vict. c.  
42, sec.  
434 to 451.

In cities, boards of commissioners of police are appointed, whose duty it is to make regulations for the government of the police force. The city council has the right to appoint a chief constable, and of determining how many constables are necessary, but the commissioners have the power of appointment and removal. In towns there may also be boards of police commissioners, with the same powers as those appointed in cities; but where there are no such boards, the town council makes the necessary appointments. Police officers may now take bail in cases within the cognizance of provincial jurisdiction.

I shall next consider some officers of lower rank than those which have gone before, and of more confined jurisdiction, but still such as are universally in use through every part of the province—namely, constables.

County constables.

R. S. O.  
c. 82.

59 Vict.  
c. 26.

County constables in Ontario are appointed by the justices at the General Sessions of the Peace, or by the County Judge. When appointed they serve for one year, and then, subsequently, from year to year without reappointment, unless they claim exemption, when they are released at any time after the first year. A county high constable is also appointed by the county council.

Provincial constables.

Provincial constables, that is, constables for the whole province, are appointed by the Lieutenant-Governor.

56 Vict.  
c. 19.

\* A Crown Attorney is specially appointed for the City of Toronto as distinct from the County of York, for which municipality a separate Crown Attorney is also appointed.

The general duties of all constables, both high and petty, as well as of the other officers, is to keep the King's peace in their several districts, and to that purpose they are armed with very large powers of arresting and imprisoning, of breaking open houses, and the like. By statute 24 Geo. II. c. 44, no action shall be brought against a constable for anything done in obedience to a magistrate's warrant, until demand has been made of a perusal and copy of the warrant, and that demand has been neglected to be complied with for the space of six days. Constables may also arrest without warrant for alleged breaches of the peace not committed in their presence, under urgent circumstances, and provided the complainant gives satisfactory security to appear to prosecute. One of their principal duties, arising from the Statute of Winchester, which appoints them, is to keep watch and ward in their respective jurisdictions. Ward, guard, or "custodia," is chiefly applied to the daytime in order to apprehend rioters and robbers on the highways; the manner of doing which is left to the discretion of the justices of the peace and the constable; the hundred being, however, answerable for all robberies committed therein by daylight, or having kept negligent guard. Watch is properly applicable to the night only (being called among our Teutonic ancestors "wacht" or "wacta"), and it begins at the time when ward ends, and ends when that begins; for, by the Statute of Winchester, in walled towns the gates shall be closed from sun-setting to sun-rising, and watch shall be kept in every borough and town, especially in the summer season, to apprehend all rogues, vagabonds and night-walkers. County constables are subject to the inspection of the inspector of legal offices.

Duties of  
constables



*Statutes Relating to the Foregoing Subject of Subordinate Magistrates.**R. S. O. with Amendments.*

## PAGE

- 225.. Sheriffs—c. 16, 1888 c. 6; 1899 cc. 6, 10; 1892 cc. 5, 6, 15, 17; 1893 c. 5;  
1894 c. 10; 1896 c. 4.
- 228.. Gaolers—55 Vict. c. 42, secs. 464, 465.
- 230.. Coroners—c. 80, 1891, c. 37; 1894 c. 31; 1895 c. 17.
- 232.. Accidents by Fire—c. 217; 1891 c. 37.
- 232.. Justices of the Peace—c. 71, 1891 c. 16.
- See also 55 Vict. c. 42, secs. 415 to 419a.
- 235.. " " Protection of—c. 73, 1890 c. 23.
- 235.. " " Returns by—c. 76.
- 235.. " " Fees of—c. 78.
- 235.. Police Magistrates—c. 72, 1888 cc. 10, 12; 1892 c. 16; 1894 c. 28.
- 235.. Deputy Police Magistrates—1894 c. 29.
- 235.. Returns by Police Magistrates—c. 77.
- 235.. County Crown Attorneys—c. 79, 1891 c. 17; 1893 c. 19.
- 236.. Dominion Police Commissioners—c. 81.
- 236.. Police Commissioners—1892 c. 42, secs. 434-451; 1896 c. 51, sec. 31.
- 236.. Provincial Constables—c. 82, sec. 10.
- 236.. High and County Constables—c. 82, 1896 c. 26.
- 236.. Bail by Constables—1896 c. 27.

## CHAPTER I.

SECTION 2—*Continued.*

## RELATIVE RIGHTS OF PERSONS (PUBLIC).

## THE PEOPLE—

HAVING DISCUSSED THE SUBJECT OF  
THE MAGISTRATES, THE PEOPLE  
FORM THE NEXT SUBJECT.

## PEOPLE ARE EITHER

ALIENS OR NATURAL-BORN SUBJECTS.

ALIENS—Expatriation.

Repatriation.

Naturalization.

## INDIANS.

Indian Department, mode of  
management of Indian affairs.

Advance of Indians to full rights  
of citizenship.

Enactments specially relating to  
Indians.

THE PEOPLE ARE EITHER CLERGY  
OR LAITY.

NO STATE CHURCH IN ONTARIO.

THE LAITY ARE EITHER CIVIL,  
MILITARY, OR MARITIME.

The Civil State includes Nobility  
and Commonalty.

Degrees of Commonalty.

The Militia represent in Ontario  
the Military State.

The sailors on the inland lakes  
represent the Maritime State.

Other divisions of the civil state  
are special professions.

Physicians and surgeons.

Land surveyors, architects, den-  
tists, druggists and veterinary  
surgeons.

Farmers.

Department of Agriculture.

Workingmen.

Having now treated of persons as they stand in the public relation of magistrates, I now proceed to consider such persons as fall under the denomination of the people. And herein all the inferior and subordinate magistrates last treated of are included.

The first and most obvious division of the people <sup>The</sup> is into aliens and natural born subjects. Natural born <sup>people.</sup> subjects are such as are born within the dominions of the Crown of England; that is, within the ligeance, or, <sup>Aliens and</sup> as it is generally called, the allegiance of the King; and <sup>natural</sup> aliens, such as are born out of it. Allegiance is the tie, <sup>born sub-</sup> or ligamen, which binds the subject to the King, in re- <sup>jects.</sup> turn for that protection which the King affords the subject.

Canadians, being British subjects, owe allegiance to the King of Great Britain. The Governor-General, the Lieutenant-Governor and every member of the Sen-

Oath of  
allegiance.

B. N. A.  
Act, Fifth  
Schedule.

R. S. C.  
c. 112.

Implied  
allegiance.

Natural  
and local.

ate or House of Commons, or of the Provincial Legislature, must take an oath of allegiance in the following words: which were adopted in England at the time of the Revolution of 1688: "I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria." Substituting the name of the King or Queen for the time being. Public officials, in both Dominion and Province, as already stated,\* are required to take the oath of allegiance. The Dominion has also prescribed a form of oath to be taken on all occasions except for the purposes of the British North America Act.

The corresponding English oath may by early statute be tendered by any two justices of the peace to any person whom they may suspect of disaffection.

But, besides these express engagements, the law also holds that there is an implied, original, and virtual allegiance owing from every subject to his sovereign, antecedently to any express promise; and although the subject never swore any faith or allegiance in form.

Allegiance, both express and implied, is however distinguished by the law into two sorts or species, the one natural, the other local; the former was until 1870 considered perpetual, the latter temporary. Natural allegiance is such as is due from all men within the King's dominions immediately upon their birth. For immediately upon their birth, they are under the King's protection; at a time, too, when during their infancy, they are incapable of protecting themselves.

Local allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the King's dominion and protection: and it ceases the instant such stranger transfers himself from this Dominion to another country.

33 & 34  
Vict. c. 14  
(Imp. Act).

The old rule of natural allegiance used to be "Once an Englishman always an Englishman," but by an Imperial Act, passed in 1870, which applies to Canada, this rule was abolished. It was then provided that British born subjects might cease to become so and become aliens, and might thereafter renew their allegiance. The

\* See page 64 and references there given.

national status of women and children is also laid down by the same Act. It is also declared that colonies may legislate with respect to naturalization.

The Parliament of the Dominion, having under the British North America Act the exclusive right to legislate as to naturalization and aliens, has laid down the following rules:

### 1. Expatriation.

The King is empowered to enter into a convention with any foreign state to the effect that the subjects of that state who are naturalized as British subjects may divest themselves of their status as British subjects; an order in council must then be passed declaring that the convention has been duly entered into. When this is done, any person originally a subject of the foreign state who has been naturalized as a British subject within Canada may make a declaration of alienage; when he does so he is within Canada regarded as an alien, and as a subject of the state to which he originally belonged. The declaration may be made before any Judge or justice of the peace, or any other officer for the time being authorized by law to administer an oath for any judicial or other legal purpose. Any person who by reason of his having been born within the dominion of His Majesty is a natural born subject, but who also at the time of his birth became under the law of any foreign state a subject of that state, and is still its subject, may, if of full age and not under any disability, make a similar declaration of alienage; disability means the disability of being an infant, lunatic, idiot, or married woman. Any person who is born out of His Majesty's dominions of a father who is a British subject may, if of full age and not under any disability, make a similar declaration; the effect of the declaration is that the person making it ceases to be a British subject.

### 2. Repatriation.

Any British subject who has at any time after the 4th of July, 1883, when in any foreign state and not

B. N. A.  
Act, s. 91,  
No. 25.

Expatria-  
tion.

R. S. C.  
c. 113.

Repatria-  
tion.

under any disability, voluntarily become naturalized in that state is deemed within Canada to have ceased to be a British subject, and shall be regarded as an alien. Within two years after the 4th of July, 1883, a person who was desirous of remaining a British subject within Canada might make a declaration that he was desirous of remaining a British subject; upon so doing, he remained a British subject within Canada.

Natural-  
ization.

### 3. Naturalization.

Any alien who has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada, or of any of the provinces of Canada for a term of not less than three years, and intends when naturalized either to reside in Canada or to serve under the Government, may become a British subject. To do so he must take an oath of residence and an oath of allegiance; this oath may be taken before a Judge or a commissioner or notary public, stipendiary magistrate or police magistrate. In support of his application the person must adduce such evidence as the person before whom he takes the oath requires. Upon being satisfied with the evidence, and that the alien is of good character, the official must grant the applicant a certificate that the person has become naturalized as a British subject. This certificate must be presented to the Court of General Sessions of the Peace of the county within the jurisdiction of which the alien resides, or to the Court of Assize and Nisi Prius during its sittings. It must be presented in open Court on the first day of some general sitting of the Court; it is then read openly in Court. If the facts mentioned are not controverted and no valid objection made to the naturalization of the alien, the Court must direct that the certificate be filed on record; when filed the Court grants a certificate of naturalization to the applicant. An alien to whom this certificate is granted is within Canada entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural born British subject is entitled or subject. There is this qualification: that while within the limits of a

foreign state of which he was a subject he is deemed to be a British subject, unless he has ceased to be a subject of the old state in pursuance of its laws or in pursuance of some treaty or convention. A special certificate of naturalization may be granted to any person with respect to whose nationality as a British subject any doubt exists. The granting of the special certificate is not any admission that the person to whom it was granted was not previously a British subject. A statutory alien may apply to the proper Court or authority for a certificate of re-admission to British nationality re-admitting him to the status of a British subject within Canada; when this certificate is granted the person to whom it is issued from its date resumes his position as a British subject within Canada. If a foreign state has entered into a convention that the subjects of that state who have been naturalized as British subjects may divest themselves of their status as subjects of the foreign state; and when the convention requires a residence in Canada or service in Canada of more than three years, then an alien who desires to divest himself of his status as a foreign subject of that state may, instead of taking the oath showing three years' residence or service, take an oath showing the residence or service for the length of time required by the convention or by the laws of the foreign state.

A married woman within Canada is deemed to be a <sup>Status of</sup> subject of the state of which her husband is for the time <sup>wives and</sup> being a subject. A widow who is a natural born sub- <sup>children</sup> <sup>of aliens.</sup> ject, and who has become an alien in consequence of her marriage, is deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality within Canada in the same way as other persons obtain the same certificate. If the father is a British subject, or the mother is a British subject and a widow, and becomes an alien, then every child of that father or mother, who during infancy has become resident in the foreign country, and has according to the laws of that country become naturalized there, is deemed to be an alien, not a British subject; if the father, or mother being a widow, has ob-

tained a certificate of re-admission to British nationality, then every child of that father or mother who during infancy has become a resident in Canada with such father or mother is deemed to have remained in the position of a British subject within Canada. If the father, or mother who is a widow, has obtained the certificate of naturalization within Canada, every child of that father or mother who during infancy has become resident with the father or mother in Canada, is within Canada deemed to be a naturalized British subject. If any British subject becomes an alien, he is not thereby discharged from any liability in respect of any Acts passed before the date he became an alien. No alien can be naturalized in Canada except under the provisions of the Naturalization Act. Hence, there can be no denizens.\*

Indians.

No account of the people of Canada would be complete without an examination of the legal position of the Indian inhabitants. Once the possessors of the territory now occupied by the whites, they will always be entitled to careful consideration. It is a happiness to know that the Canadian system of dealing with the Indian tribes has been honest. In the Province of Ontario they have been found capable of an unexpected degree of mental development. Their rights are carefully guarded, and it will now be our duty to examine what provisions the law lays down in this direction. By the British North America Act the Indians are confided to the care of the Dominion. We have seen that the Province has legislated as to their exercise of the provincial franchise. The Dominion Parliament has also, as we have seen, given Indians a vote under certain restrictions. I now proceed to state the rules laid down regarding their social condition, and what provisions have been made to enable them to assume the rights of full civilized citizenship.

Superintendent-General of Indian Affairs.

R. S. C.  
c. 43.

The Minister of the Interior is Superintendent-General of Indian Affairs, and as such has control and

\* A denizen is an alien born who has obtained *letters patent* to make him an English subject: "a high and incommunicable branch of the royal prerogative," according to Blackstone. Letters patent cannot be granted in the Dominion to give an alien the privilege of being a denizen, because the Crown has assented to the Act conferring upon the Dominion the sole right to legislate respecting aliens and naturalization in Canada.



management of the lands and property of the Indians in Canada. A department of the civil service is called the Department of Indian Affairs, over which the Superintendent-General presides. Indians are legislated for by "bands." A band is any tribe, band, or body of Indians, who own or are interested in a reserve, or in Indian lands in common of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible. An irregular band means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown; who possess no common fund managed by the Government of Canada, and who have not had any treaty relations with the Crown. An Indian is any male person of Indian blood reputed to belong to a particular band; any child of such person; any woman who is or was lawfully married to any such person. Any illegitimate child may be excluded from the membership of a band unless he has with the consent of the band shared in the distribution moneys of the band for a period exceeding two years. An Indian who has for five years continuously resided in a foreign country without the consent in writing of the Superintendent-General or his agent ceases to be a member of the band of which he was a member; he cannot again become a member unless the consent of the band is first obtained. Any Indian woman who marries any person other than an Indian, or who marries what is called a non-treaty Indian, that is, any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, ceases to be an Indian within the Act, but she remains entitled to share equally with the members of the band to which she formerly belonged in their annual receipts. Any Indian woman who marries an Indian of any other band, or a non-treaty Indian, ceases to be a member of the band to which she formerly belonged and becomes a member of the band of which her husband is a member. Indians are

**Reserves.** placed upon reserves. No Indian is deemed to be lawfully in possession of any land in the reserve unless he is located by the band or council of the band with the approval of the Superintendent-General; a location ticket is then issued in his favour. Any Indian holding under location ticket or other duly recognized title any parcel of land upon the reserve of his band, or upon a reserve of any other band upon which he resided at the date of his death, has the power of devising this land by will; he may also bequeath his personal effects or other property; the devise or bequest must be to such member or members of his family or relative or relatives as he chooses. The will must be consented to after his death by the band owning the reserve, and must be approved of by the Superintendent-General; the devise must not be to any relative who is not entitled to reside upon the reserve, or who is further removed than a second cousin; if not assented to or approved of, the Indian is deemed to have died intestate. Upon the death of any Indian intestate, his right and interest, together with his goods and chattels, devolve one-third upon his widow, if any, if she is a woman of good moral character, and living with her husband at the time of his death; the remainder passes to his children in equal shares if they are Indians within the meaning of the Act. During the minority of the children the administration and charge of the land and goods and chattels devolves upon the widow; she may at any time be removed by the Superintendent-General, who may transfer the charge to any other person. If an Indian dies without issue leaving a widow, his land and his goods and chattels are vested in her; if he leaves no widow, then they are vested in the Indian nearest of kin to the deceased; if he has no heir nearer than a cousin, they are vested in the Crown for the benefit of the band. The Superintendent-General decides all questions which arise respecting the distribution. No person or Indian other than an Indian of the band is allowed to settle, reside, or hunt upon the reserve of the band; all mortgages, or leases or agreements to the contrary are void. Trespassers may be removed by the Superintendent-General or his deputies;

**Wills by Indians.**

**Indian's widow.**

**Trespassers on Indian lands.**

they may also be fined and imprisoned. Indians may be required to perform labour on the public roads through their reserve; this labour must be performed under the sole control of the Superintendent-General or his deputies. Every band of Indians must keep the roads, bridges, ditches and fences within their reserve in proper order. If, by the violation of any of the conditions of any Indian trust, the title to any reserve lapses or becomes void in law, the legal title becomes vested in the Crown in trust, and the property must be managed for the band or irregular band which had been previously interested in the reserve as an ordinary reserve. No release or surrender of a reserve is valid or binding except on the following conditions:

It must have been assented to by a majority of the male members of the band of the full age of twenty-one years at a meeting of the council summoned for the purpose according to the rules of the band, and held in the presence of the Superintendent-General or a deputy.

No Indian is entitled to vote or be present at this <sup>Indian Council.</sup> council unless he habitually resides on the reserve and is interested in it; the assent must be certified on oath by the Superintendent-General or presiding officer before some Judge; when the assent has been certified the release or surrender must be submitted to the Governor in Council for acceptance or refusal. When Indian lands <sup>Sales of Indian lands.</sup> are sold or transferred the proceeds are applied for the benefit of the band. Every patent for Indian lands must be prepared in the Department of Indian Affairs, and must be signed by the Superintendent-General or his deputy; it must also be registered by the Registrar-General, and then transmitted to the Secretary of State for Canada, by whom it must be countersigned and the Great Seal affixed. Whenever patents for Indian lands have issued through fraud or any error, or improvidence, the Exchequer Court of Canada, or a superior Court in any province may decree the patent to be void. The Superintendent-General may grant licenses to cut timber on Indian reserves. No license can be granted for a longer period than twelve months from its date; it must particularize the rights of the holder of the license in

every respect. All trees cut are liable to payment of dues and may be sold for non-payment; trees cut without authority on Indian lands may be seized. A claimant may file his claim within one month from the day of the seizure. All Indian moneys must be applied for the benefit of the Indians on the same principles as Indian lands. Whenever the Governor in Council deems it advisable for the good government of a band to introduce the system of election of chiefs, he may provide that the chiefs be elected at such time and place as the Superintendent-General directs. The chiefs may be elected for a term of three years, but may be deposed by the Governor in Council for dishonesty, intemperance, immorality, or incompetency; they may be in the proportion of one head chief and two second chiefs or councillors for every two hundred Indians; no band can have more than six head chiefs and twelve second chiefs, but any band composed of thirty Indians may have one chief. The chief or chiefs of any band or council may make regulations as to the religious denomination of the teacher of the school on the reserve; the minority may also have a separate school; the internal economy of the tribe is also under the management of the chiefs. No Indian or non-treaty Indian is liable to be taxed for any real or personal property, unless he holds in his individual right real estate under a lease or in fee simple, or personal property outside of the reserve; in that case he is liable to be taxed for that property as other persons. No person can take any security, or obtain any lien or charge upon real or personal property of any Indian, except on real and personal property subject to taxation, as just mentioned. Indians have the right to sue for debts or in respect of torts, or to compel the performance of obligations contracted with them in any suit or action between Indians, or in any case of assault in which the offender is an Indian. No appeal lies from any judgment, order or conviction, by any police magistrate, stipendiary magistrate, two justices of the peace or Indian agent, when the sum in question does not exceed \$10. No pawn taken from any Indian for any intoxicant can be retained by the person to whom the pawn

Chiefs.

Schools

Restrictions on dealings with Indians.

is delivered. No presents given to Indians, and no property purchased or acquired by means of any annuities granted to Indians and in the possession of a band, can be taken, seized, or distrained for any debt or cause.

When a male Indian or unmarried Indian woman of the full age of twenty-one years applies to be enfranchised the procedure is as follows:

The Superintendent instructs the agent of the band to call upon the applicant to furnish a certificate under oath by the priest, clergyman or minister of the religious denomination to which the applicant belongs, or by a stipendiary magistrate or two justices of the peace, that the applicant is, and has been for at least five years previously, a person of good moral character, temperate and of sufficient intelligence to be qualified to hold land in fee simple and otherwise to exercise all the rights of an enfranchised person. Upon receipt of the certificate the agent submits it to a council of the band of which the applicant is a member; he must inform the Indians assembled at the council that thirty days will be given within which objection to the enfranchisement can be made. If the Superintendent-General decides in favour of the applicant he may grant him a location ticket as a probationary Indian. Every Indian who is admitted to any degree by any university, or who is admitted to practice law, or who enters holy orders, may, upon petition to the Superintendent ipso facto be enfranchised. The Superintendent-General may give an enfranchised Indian a suitable allotment of land. After the expiration of three years, if the conduct of the Indian has been satisfactory, the Governor in Council may, on the report of the Superintendent-General, order the issue of letters patent granting to the Indian in fee simple the land before allotted to him. Power to sell, lease or otherwise alienate the land is forbidden, except with the sanction of the Governor in Council.

Letters patent to an Indian must declare the name and surname which he has chosen; if he is a married man, his wife and minor unmarried children are also held to be enfranchised from the date of the

Enfranchisement.

issue of these letters patent. Any distinction between the legal rights and liabilities of Indians and those of His Majesty's other subjects cease to apply to the enfranchised person, or to his wife and minor unmarried children. If a probationary Indian fails in qualifying to become enfranchised, his claim is the same as that conferred by an ordinary location ticket. An Indian may become entitled to his share of the moneys of the band in the same way as to an allotment of the land.

Furnish-  
ing intoxi-  
cants to In-  
dians pro-  
hibited.

Very careful provisions are made in the direction of the preventing of furnishing intoxicants to Indians. Any constable may, without process of law, arrest any intoxicated Indian and convey him to any common gaol or lockup; when seized the Indian must be brought before the Judge or magistrate, or Indian agent; if convicted he is liable to imprisonment for a term not exceeding one month, or to a penalty not exceeding thirty dollars and not less than five dollars, or to both penalty and imprisonment. If he refuses to furnish the name of the person from whom he procured the intoxicants he is liable to a further penalty and fine. Prostitution of Indian women is also guarded against, and stringent penalties enforced for breach of the law. Upon any inquest or any inquiry into any criminal charge, or upon the trial of any crime or offence, the evidence of an Indian may be received. The usual form of oath need not be administered to the Indian; he must, however, make his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, in such a form as the Court thinks most binding on his conscience. The evidence of the Indian must be reduced to writing and signed by the Indian, and verified by the interpreter, if any, and by the signature of the Judge or person before whom the evidence is given. The Indian must be cautioned that he will be liable to incur punishment if he does not tell the truth, the whole truth and nothing but the truth. At the election of a chief or chiefs, or at the granting of any ordinary consent required of the band, those entitled to vote must be the male members of the band of the full age of twenty-one years; the vote of the

Evid-ence  
of Indians  
how re-  
ceived.

majority of these members is sufficient to determine the election or grant the consent.

For the purpose of advancing the general condition of Indians, their reserves may by order in council be divided into sections; the number of these sections must not exceed six or be less than two. Each section must have a number of male Indians of full age equal as nearly as possible to such proportion of the male Indians resident on the reserve as one section of the reserve bears to all the sections. The Indians resident on the reserve meet and elect a council; one or more members may be elected by each section; the persons elected act as councillors; they meet and select one of their own number as chief councillor. An election is held subsequently in each year to appoint successors. The council must meet not more than twelve times or less than four times in the year for despatch of business; it may make by-laws for confirmation by the Superintendent-General for the general internal economy of the reserve; it has the power of imposing penalties for disobedience. Under these by-laws the penalty can in no case (except for non-payment of taxes) exceed thirty dollars, nor the imprisonment thirty days. Any member of the council who is proved to be a habitual drunkard, or immoral, or to have accepted a bribe, or to have been guilty of dishonesty, or of malfeasance of office of any kind, may be disqualified from acting as a member of the council.

Indian  
advance-  
ment.

R. S. C.  
c. 44.

By the Provincial Act relating to assessments, Indian lands are exempt from taxation. They are also exempt from the operation of the Lord's Day Act. The Commissioner of Crown Lands may set apart for the exclusive use of Indians certain waters for fishing purposes for their own use at all times and seasons. The Ontario Game Protection Act of 1893 also is declared not to affect Indian treaty rights, or Indians hunting on their own grounds. Power is given to the Lieutenant-Governor to exempt them altogether from the operation of the Act.

55 Vict.  
c. 48, sec.  
7 (1).

R. S. O.  
c. 203.

R. S. O. c.  
32, sec. 23.

56 Vict. c.  
49, sec. 27.

The people, whether aliens or natural-born subjects, are divisible into two kinds, clergy and laity. In Can-

Clergy and  
laity.



R. S. O.  
c. 235.

R. S. O.  
c. 236.

ada, we all know, there is no established church, and any discussion of the legal rights of the clergy is unnecessary. Tithes cannot be claimed, demanded or received by any ecclesiastical person of the Protestant Church in Ontario. The free exercise and enjoyment of religious profession and worship without discrimination or preference is guaranteed to all the King's subjects in Ontario. This assurance must not be made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province. Under the authority of 31 Geo. III. c. 31,\* certain rectories were established in Ontario, and it was intended to endow with public lands a branch of the Church of England in Canada. The attempt failed, and the Legislature has expressly enacted that no more parsonages or rectories according to the establishment of the Church of England can be endowed by State aid in Ontario. Those rectories in existence when the Act was passed which forbade their future creation were left untouched, but no more grants for such purposes have been made since then.

Laity are  
civil, mili-  
tary or  
maritime.

The lay part of His Majesty's subjects, or such of the people as are not comprehended under the denomination of clergy, may be divided into three distinct states, the civil, the military and the maritime.

Civil state.

That part of the nation which falls under our first and most comprehensive division, the civil state, includes all orders of men, from the highest nobleman to the meanest peasant, that are not included under the former division of clergy, or under the two latter, the military and maritime states: and it may sometimes include individuals of the other three orders; since a nobleman, a knight, a gentleman or a peasant may become either a divine, a soldier or a seaman.

Nobility  
and commonalty.

The civil state consists of the nobility and the commonalty. In Ontario, specimens of the nobility are rare. The democratic sentiment of a new country is against hereditary titles, and I need not delay by considering that subject. The commonalty, like the nobility, says

\* See page 7 *ante*.

Blackstone, are divided into degrees. He enumerates them as follows: 1. Vidames, obsolete in his time. 2. Knights and baronets. These were names of dignity, esquires and gentlemen being only names of worship. But before these last, the heralds rank all colonels, sergeants at law, and doctors in the three learned professions. Blackstone then enumerates four sorts of esquires, but I must pass them over. As for gentlemen, "who-<sup>Gentlemen.</sup> soever studieth the laws of the realm, who studieth in "the universities, who professeth the liberal sciences "and (to be short) who can live idly and without manual "labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and "shall be taken for a gentleman."

A yeoman was a man who had free land of forty shillings by the year: who was anciently thereby qualified to serve on juries, vote for knights of the shire and do any other acts, where the law requires one that is Yeomen. *probus et legalis homo.* The rest of the commonalty are tradesmen, artificers and laborers, who, as well as all <sup>Residue.</sup> others, must, in pursuance of the Statute of 1 Hen. V. c. 5, be properly styled in all legal proceedings.\* The <sup>1 Hen. V. c. 5.</sup> philosophy or the necessity of these social distinctions I will not attempt to discuss. The sole distinction recognized in our time and country seems to be that of wealth, and to that all others bow.

The military state includes the whole of the soldiery, or such persons as are peculiarly appointed among the rest of the people for the safeguard and defence of the Dominion. For this purpose we in Canada rely not on a standing army but on our militia.

The command-in-chief of the land and naval militia <sup>B. N. A. Act, sec. 15.</sup> and of all military and naval forces of and in Canada is vested in the King, and is exercised by His Majesty personally or by the Governor-General as his representative. The Department of Militia and Defence is responsible for the administration of militia affairs, and

\*The Court of Common Pleas in England refused to hear an affidavit read because a barrister named in it was not called an esquire. 1 Wils. 244 (Christian's note).

Militia,  
how formed,  
R. S.  
C. c. 41.

for the control and management of all military buildings, docks, and fortifications. The militia consists of all the male inhabitants of Canada of the age of eighteen years and upwards, and under sixty, not exempt or disqualified by law, and being British subjects; all the male inhabitants capable of bearing arms may be required to serve in case of "levee en mass." The militia is divided into four classes: first, those between the ages of eighteen and thirty who are unmarried or widowers without children; second, those between thirty and forty-five years who are unmarried or widowers without children; third, those between eighteen and forty-five years who are married or widowers with children; fourth, those between forty-five years and sixty. The militia is divided into active and reserve militia land forces. The active militia is composed of (a) Corps raised by voluntary enlistment. (b) Corps raised by ballot. (c) Corps composed of men raised by voluntary enlistment and men balloted to serve. The marine forces, raised similarly, are composed of seamen, sailors, and persons whose usual occupation is upon any steam or sailing craft navigating the waters of Canada. The reserve militia consists of the whole of the men who are not serving in the active militia for the time being. The period of service is three years. No man can retire in time of peace without giving to his commanding officer six months' notice of his intention. The persons who are exempt from enrolment and from active service at any time are Judges, clergy, professors, revenue officers, wardens and servants in penitentiaries and lunatic asylums; persons disabled by bodily infirmity; the only son of a widow, being her only support. The following persons, though enrolled, are exempt from service at any time except in case of war, invasion or insurrection: Half-pay officers of His Majesty's army or navy, seafaring men and sailors actually employed in their calling, masters of public schools actually engaged in teaching, Quakers, Mennonites or Tunkers, and members of any religious denomination averse, on religious grounds, to military service. Militia men are drawn by ballot by classes.

Active  
militia.

Reserve  
militia.

The active militia is liable to be called out for active service in defence of the civil power, in case of emergency. A requisition in writing is necessary, signed by the chairman of the General Sessions of the Peace, or by any three justices of the peace, of whom the head of the municipality in which the emergency occurs or is anticipated may be one. The senior officer of the active militia is placed in command, and he must obey the instructions given him by any justice of the peace. Officers and men must obey the orders of the commanding officer; they are constituted special constables, and are considered to act as such so long as they remain called out, but they act only as a military body and are liable to obey the orders of their military commanding officer only, and men and officers when thus called out are entitled to pay, which the municipality is ultimately liable for. Commissions are granted by His Majesty during pleasure; non-commissioned officers are appointed by the officer commanding the corps or battalion to which they belong, and hold their rank during pleasure. In time of peace no person except the officer commanding the militia, the adjutant-general and quartermaster-general, can hold higher rank in the militia than that of lieutenant-colonel. Whenever the militia is called out for active service in the field, His Majesty may appoint colonels and other officers of superior rank, in no case to exceed major-general. Officers of the regular army are always to be reckoned senior to militia officers of the same rank, whatever the dates of their commissions. Schools of military instruction are provided, and in every normal school, university, college or school in Canada, in which classes of instruction are instituted, arms and accoutrements are furnished. The officer commanding any military district or division, or the officer commanding any corps of active militia, in sudden circumstances of emergency, of invasion, or insurrection, or imminent danger of either, may call out the whole or any part of the militia within his command. His Majesty may call out the militia, or any part, for active service either within or without Canada, at any time when it appears advisable so to do by reason of

Defence  
of civil  
power.

Comm  
sions.

Calling  
out militia  
for service.

any invasion or insurrection, or danger of any invasion. Militia men, when called out for active service, must continue to serve for at least one year from the date of their being called out, if required to do so, or for any longer period which His Majesty appoints. In time of war no man can be required to serve in the field continuously for a longer period than one year; but any man who volunteers to serve for the war, or for any longer period than one year, can be compelled to fulfil his engagement. In cases of unavoidable necessity, of which necessity His Majesty shall be sole judge, His Majesty may call upon any militia man to continue to serve beyond his one year's service in the field for any period not exceeding six months. The active militia are subject to the King's regulations and orders for the army, and also subject to any Army Act passed by the Imperial Parliament, and any other laws then applicable to His Majesty's troops in Canada. No man is subject to any other corporal punishment but death or imprisonment for contravention of these laws. Any officer or man charged with any offence committed while serving in the militia is liable to be tried by court-martial; if he is convicted (even within six months after his discharge) he may be punished. Any officer or man may be tried for the crime of desertion at any time, without reference to the length of time which has elapsed since his desertion. When called out for active service every militia man must attend as required by his commanding officer; he must have with him any arms and accoutrements he has received, and he must provide himself with such provisions as the officer directs. Every militia man called out for active service, who absents himself without leave from his corps for a longer period than seven days, may be tried by court-martial as a deserter. Courts-martial may be convened for the purpose of investigating and reporting on any matter connected with the government or discipline of the militia, and with the conduct of any officer or man of the force. The regulations for courts-martial are the same as those of the regular army. Every person required to give evidence may be summoned or ordered to attend. If any person

Flogging  
forbidden.

Punish-  
ment.

Courts-  
martial.

who is not enrolled in the active militia is summoned as a witness and makes default in attending or refuses to take an oath, or affirms or refuses to produce documents, or refuses to answer lawful questions, or is guilty of any contempt of Court, the president of the court-martial may certify the default, refusal or contempt to a Judge of any Court of Justice in the locality having power to punish persons guilty of such offences; on inquiry made he may be punished as he would have been punished in the other Court. No militia officer or militia man can be sentenced to death by any court-martial except <sup>Sentence of death.</sup> for mutiny, desertion, traitorously delivering up to the enemy any fortress, post, or guard, or for traitorous correspondence with the enemy. No sentence of any court-martial can be entered into until approved of by His Majesty.

It has already been mentioned that a military college, for the purpose of imparting a complete military education, has been established at Kingston.\*

The maritime state is nearly related to the military, <sup>The Maritime state.</sup> though Blackstone says, "much more agreeable to our free constitution. The royal navy of England hath ever been its greatest defence and ornament; it is its ancient and natural strength; the floating bulwark of the island; an army from which, however strong and powerful, no danger can be apprehended to liberty." In Canada, just as we have no standing army, so we have no Canadian navy. The British navy protects us and our fisheries without costing us one dollar. If this support were withdrawn, our position would be sufficiently helpless. How long England will be contented to give us this mighty support free of expense, or how long we will find it consistent with our national self-respect to receive it without offering to contribute to its maintenance, I will not pause to enquire, but the reflection that we enjoy the benefit of English taxation without any contribution of ours ought to be not a consoling thought to a proud, high-spirited race. In Ontario, we are not so much concerned with any special

\* Page 72 ante.

law relating to ocean navigation, as only for a short distance on our northern border do we reach the ocean, and our shores there afford but shallow anchorage. But our southern border lies along the Great Lakes, and it is necessary for us to know the law relating to shipping on those lakes. The British North America Act assigns to the Dominion the following maritime subjects:—

B. N. A.  
Act, s. 91,  
Nos. 9, 10,  
11.

(1) Beacons, Buoys, Lighthouses and Sable Island.

(2) Navigation and Shipping.

(3) Quarantine and the Establishment and Maintenance of Marine Hospitals.

I propose, therefore, to state the substance of such of the Dominion enactments as are necessary for us in Ontario to be acquainted with. The two subjects most affecting us on this point are: (1) The Registration of Ships. (2) Seamen on Inland Waters.

Registra-  
tion re-  
quired.

R. S. C.  
c. 72.

Every ship, propelled either wholly or in part by steam, whatever her tonnage, and every ship not propelled wholly or in part by steam, of more than ten tons burden, and having a whole or fixed deck, may be registered under the Merchant Shipping Act of 1854, or the Canada Registration Shipping Act. If not registered she is not recognized as a British ship or admitted to the privileges of a British ship in Canada. No officer of customs can grant clearance to any ship required to be registered, for the purpose of enabling her to proceed on a voyage, unless the master, upon request, produces a proper certificate of registry. If a ship attempts to proceed on a voyage as a British ship without a clearance, she may be detained. Registers for shipping are provided at the ports of Canada for the purpose of registering ships. Changes in names of ships may be made on the registry. Whenever a shipping casualty happens anywhere in the case of a ship registered in Canada, or within the limits of Canada in the case of any other British ship, the master, or if the master is dead, the chief surviving officer, must, within twenty-four hours of his landing in Canada after the happening of the casualty, attend the principal officer of customs; he must submit himself for examination, and if he makes



default he incurs a penalty not exceeding \$200. The managing owner of any ship registered in Canada must send information of her loss, or apprehension of loss through non-arrival, and furnish such information as he is able respecting the loss of the property and persons on board. Licenses must be obtained by the masters or owners of vessels which are not required to be registered. A ship about to be built or being built may be recorded under a temporary name by the registrar of shipping at or nearest to the port at which she is about to be built or is being built. Any builder desirous of raising money by a mortgage on any ship about to be built or being built, must furnish to the registrar of shipping at the port her full description. A ship about to be built or being built, and thus recorded, may be security for a loan or other valuable consideration. A short form of mortgage is provided, which may be registered by the registrar of shipping. A discharge of this mortgage may in like manner be recorded. Mortgagees are entitled to priority according to the date at which their mortgages are respectively recorded, and not according to the date of each instrument. A mortgagee is not, by reason of his mortgage, deemed to be the owner of a ship, nor is the mortgagor deemed to have ceased to be the owner, except in so far as is necessary for making the ship available as security for the mortgaged debt. Every bill of sale of a ship when duly executed must be filed with the proper registrar of shipping. Mortgages may be transferred and the transfers also registered in the registry of shipping. Whenever the building of a ship is duly completed, the first mortgagee whose claim is unsatisfied may furnish the builder's certificate for the ship, thereupon a certificate of registry may be granted. All undischarged mortgages then recorded must be transferred to the ship registry book, according to their priority. If any person takes out or attempts to take out a register for the ship at any port, except the port where the ship is built or mentioned in the statement furnished to the registrar, he is liable to a penalty of \$2,000.

Mortgage  
on ship.

Bill of sale  
of ship.

Next, as to dealings with seamen on inland waters.

Agree-  
ments with  
crew.

R. S. C.  
c. 75.

Seamen's  
wages.

The master of every ship must enter into an agreement with every seaman of the crew. This agreement must contain particulars as to the nature of the voyage, number of the crew, time for work, the capacity in which the sailor is to serve, the amount of his wages, and regulations as to conduct; it must also be signed in the presence of a witness. Running agreements may be made with the crew, to extend over two or more voyages or for a specified time; the limit of these agreements is eight months from their date, or the first arrival of the ship at her port of destination after the termination of the agreement or the discharge of cargo consequent upon the arrival. Any master of a ship who carries any seaman without such an agreement is liable to a penalty not exceeding \$20. Any seaman who has signed an agreement and is discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying the discharge, and without his consent, is entitled to receive, in addition to any wages he has earned, compensation not exceeding one month's wages. If the service of any seaman is terminated before the period contemplated in the agreement, by reason of the wreck or loss of the ship, or by reason of his having been left on shore at any place on account of his unfitness or inability to proceed on the voyage, he is entitled to wages for the time of service up to the termination, but not for any further period. If a seaman is, by reason of illness, incapable of performing his duty, and it is proved that his illness has been caused by his own wilful act or default, he is not entitled to wages for the time during which, by reason of his illness, he is incapable of performing his duty. A seaman who is engaged for a voyage or engagement, which is to terminate in Canada, cannot sue in any Court out of Canada for wages unless he is discharged with the written consent of the master, or proves ill-usage, warranting reasonable apprehension of danger to life. If any seaman on his return to Canada proves such conduct, he is entitled to recover, in addition to his wages, compensation not exceeding eighty dollars. Masters and seamen are

liable to summary punishment for offences against discipline, such as desertion or refusing to join the ship, or wilful disobedience or assaults. A master may, with or without the assistance of police officers, or constables, apprehend any sailor who refuses to proceed; he may take him before a Court, and for this purpose may detain him in custody for a period not exceeding twenty-four hours, or at once convey him on board. The Court, instead of committing the sailor to prison, may send the seaman on board of the ship, or deliver him to the master or mate. A part of the seaman's wages, not exceeding \$12, may be applied in reimbursing any costs incurred by the master. Any person who entices a seaman to desert, or harbours a deserter, is liable to imprisonment with hard labour for a term not exceeding twelve and not less than two months. Seamen may sue for wages in a summary manner before any County Court Judge, stipendiary magistrate, police magistrate, or any two justices of the peace for any amount of wages not exceeding \$200; if an order for payment of wages is not obeyed within twenty-four hours after it is made, a warrant of distress may be issued; if distress cannot be found, the amount may be levied on the ship, or its tackle and apparel. No suit or proceedings for the recovery of wages under the sum of \$200 can be instituted by or on behalf of any seaman or apprentice belonging to any ship in any Court of Vice-Admiralty, or in the Maritime Court of Ontario, or in any Superior Court, unless the owner of the ship is insolvent, or unless the ship is under arrest or is sold by the authority of the Court. If any such suit is brought unnecessarily no costs are allowed to the plaintiff. Provision is made for the safety of ships and the prevention of accidents. If complaint is made to the Minister that any ship registered in Canada is unfit to proceed on a voyage, a survey of the ship may be made, and he may exact from the complainant, if he thinks fit, a deposit to defray the expenses of the survey; if it so appears on the survey, the Minister may declare the ship to be unseaworthy, and thereupon any principal officer of customs may detain the ship; if upon the survey the ship is

Refusal of  
sailor to  
join ship.

Suits for  
seamen's  
wages.

Safety of  
ships.

found to be seaworthy, the expense of the survey must be paid by the complainant, without prejudice to any right of suit or action by the person aggrieved by the complaint. Any ship-owner who is dissatisfied with the survey may appeal to the Maritime Court of Ontario; a new survey may then be ordered. Disorderly passengers may be detained by the master or any officer of the steamer; they may be taken before a justice of the peace and dealt with by him. The master or officer in command of any steamer may refuse to receive on board any person who is drunk or disorderly, or who causes or is in a condition to cause injury or annoyance to passengers on board; if any such person is on board the master or officer may put him on shore at any convenient place. When dangerous goods are carried by ship they must be distinctly marked; if not so marked the shipper is liable to a penalty not exceeding \$500. Any shipper who shows that he is merely an agent and was not aware, and did not suspect, and had no reason to suspect, that the goods were of a dangerous nature, is not liable to more than \$40. Every person knowingly sending such goods under a false description is liable to a penalty not exceeding \$2,000. The master may refuse to take on board any package which he suspects to contain such goods, and may require it to be opened to ascertain the fact; if found on board they may be thrown overboard. Provisions are made for the inspection of steamboats and as to navigation of waters, in order to prevent collisions. For the protection of navigable waters, notice of obstruction must be given by owners or masters of ships suffering accident to the Minister of Marine.

College of  
Physicians  
and Sur-  
geons,

R. S. O.  
c. 148.

It would be improper to pass over without sufficient notice a most important branch of the civil state, namely, the medical profession of Ontario. This profession is incorporated as "The College of Physicians and Surgeons of Ontario." It is composed of registered physicians. The college is under the management of a council, which includes representatives of certain colleges, five representatives of homœopathy and twelve elective members. The

members of the council are elected for a period of five years and represent the province according to twelve divisions. The persons who are entitled to vote are all duly registered practitioners. In each of the twelve territorial divisions a division association is formed; every member of the college resident within that territorial division is a member, and a representative in the council of that division is ex officio chairman of the division association. The council has power to appoint examiners for matriculation, and to fix and determine a curriculum of studies for medical students. This curriculum must be taught in the colleges above referred to, who send representatives to the council of the college. A register is kept, in which is entered the <sup>Register.</sup> name of every medical practitioner who complies with the rules and regulations of the council; these persons only are deemed to be qualified and licensed to practice medicine, surgery or midwifery in Ontario. Each member of the college must pay an annual fee, not less than \$1.00 and not more than \$2.00, towards the general expenses of the college. A board of examiners is appointed annually by the council, who must examine all candidates for registration. These examiners are appointed, one from each of the colleges above referred to, and a number not exceeding five may be among those members of the college who are unconnected with any of the other colleges. Special regulations are made as to examiners of homœopaths. Persons whose names are <sup>Erasure of names.</sup> upon the register are liable to have their names erased if convicted of an offence which, if committed in Canada, would be a felony or misdemeanor, or who have been guilty of any infamous or disgraceful conduct in a professional respect. An exception is made of a conviction for an offence out of His Majesty's dominions, and convictions for trivial offences or for offences which, from the circumstances under which they were committed, ought not to disqualify a person from practicing medicine or surgery. Every person who is registered as a member of the council is entitled, according <sup>Actions for professional charges.</sup> to his qualifications, to practice medicine, surgery and midwifery, or any of them, in the Province of Ontario,

Actions  
against  
members.

Prohibi-  
tions.

and to recover in any Court, with full costs of suit, his reasonable charges for professional aid or advice and for the cost of any medicine or any medical appliances rendered or supplied by him to his patients. No duly registered member of the college is liable to any action for negligence or malpractice by reason of professional service requested or rendered, unless the action is commenced within one year from the date when, in the matter complained of, his professional service terminated. Penalties are imposed for false registration. No person not registered can practice medicine, surgery or midwifery for hire, gain or hope of reward. If any person not registered so practices or professes to practice, or advertises to give advice in medicine, surgery or midwifery, he is liable, upon summary conviction before any justice of the peace, to pay a penalty not exceeding \$100 nor less than \$25. If any person wilfully or falsely pretends to be a physician, doctor of medicine, surgeon, or general practitioner, or assumes any title, addition or description other than he actually possesses and is legally entitled to, he is liable, upon conviction before a justice of the peace, to a penalty not exceeding \$50 nor less than \$10. In any trial under the Act the burden of proof as to registration is upon the person charged. Every prosecution under the Act must be commenced within one year from the date of the alleged offence.

Land  
surveyors.

R. S. O.  
c. 152.

The importance of the duties imposed upon Land Surveyors with regard to questions relative to land justifies a reasonable description of the law relating to that profession. Its chief points are as follows:—

No person can act as a surveyor of lands in Ontario unless he has been duly authorized to practice. No private survey is valid unless performed by a duly authorized surveyor. Provision is made for examination for the admission of candidates. In order to be qualified to practice as a surveyor a candidate must be at least twenty-one years old, and must have passed a prescribed examination and have served for three years under an instrument in writing, duly executed before two witnesses, as apprentice to a land sur-

veyor. Persons who have been previously admitted to practice in other parts of the British dominions than the Province of Ontario need not serve for three years. If admitted in the Province of Quebec they must serve during six months of actual practice in the field with a land surveyor, duly admitted and practising in Ontario; if any other person, he must serve during twelve months of actual practice, after which he must submit himself for examination. A person who has been in attendance at a university in Ontario for two years, or in McGill University in the City of Montreal, and who has received a diploma as a civil engineer, may, after passing the preliminary examination, be received as an apprentice by any practising land surveyor. He is then required to serve during twelve months of actual service, or sufficient, with the time that he has actually passed at the university, to make up the full time of three years if he has been at the university for less than two years. Attendants at the Ontario School of Practical Science may be admitted after twelve successive months of actual service with a licensed surveyor; the final examination must then be passed. A Dominion land surveyor may become a provincial land surveyor without being subjected to any examination as regards the system of survey of lands in Ontario. Graduates of the Military College of Kingston and of the Ontario School of Practical Science are not required to pass the preliminary examination, but are bound to serve under articles for twelve successive months of actual practice, after which the final examination must be passed. Security must be given for the due and faithful performance of their duties by provincial land surveyors. A bond must be executed, with two sufficient sureties, in the sum of \$1,000 made to the Crown. Oaths of allegiance and office must also be taken before admission.

Every surveyor must obtain from the Commissioner of Crown Lands a standard measure of length and before proceeding on any survey must verify the length of his chain, and other instruments for measuring. Chain-bearers must make an affidavit or affirmation before proceeding on surveys that they will render a true

Standard  
measure  
of length.



account of their measurements; that they are absolutely disinterested in the survey, and not related or allied to any of the parties interested in the survey within the fourth degree, according to the computation of the civil law, that is to say, within the degree of cousin-german. No relative or person allied to any of the parties within this degree can be employed as chain-bearer on any survey. A land surveyor when engaged in the performance of the duties of his profession may pass over, measure along, and ascertain the bearings of any line or limit whatsoever, and for this purpose may pass over the lands of any person whomsoever, doing no actual damage to the property. If a surveyor is in doubt as to the true boundary or limit of any parcel of land which he is employed to survey, he may take evidence to establish the true position of the boundary; and may obtain the attendance of any person whom he has reason to believe is possessed of information. To do so he may file in the office of the County Court a præcipe for a subpoena, and the Judge may then order a subpoena to issue, on service of which the person must attend to be examined. If original monuments cannot be found, the surveyor must obtain the best evidence that the nature of the case admits of respecting the posts or monuments; if they cannot be satisfactorily ascertained, then the surveyor must measure the true distance between the nearest undisputed posts, limits or monuments, and then divide the distance into the number of lots which were set out in the original survey, assigning to each a proportionate breadth. If any portion of the line in front of a concession is lost, the surveyor must run a line between the two nearest points or places where the line can be clearly and satisfactorily ascertained, and plant intermediate posts or monuments on that line. Surveyors must keep exact and regular journals and field notes, and file them in order of time in which the services have been performed. They must furnish copies to the parties concerned when required, for which payment is allowed. A surveyor may administer oaths to every person whom he examines concerning any boundary, post or monu-

Taking  
evidence.

Ascertaining bound-  
aries.

Field  
notes.

ment, or any original landmark. The evidence must be reduced to writing and read over to the person who gives it, and be signed by that person. If he cannot read he must acknowledge it as correct before two witnesses.

This evidence and any documents or plans prepared and sworn to as correct before a justice of the peace by a surveyor, with respect to any survey, may be filed in the registry office in which the lands to which the same relate are situate.

Other bodies of men in the civil state have received special acts of incorporation from the Legislature. They are architects, dentists, druggists and veterinary surgeons. I am able to do no more than mention the fact of their incorporation.

The interests of another important part of the civil state in Ontario, namely, the farming community, are well looked after. Although the farmers are not organized as an incorporated profession or occupation, their special interests are placed under the charge of the Department of Agriculture. A Bureau of Industries is attached to this department, whose duty it is to collect, tabulate and disseminate industrial information. Farmers 58 Vict. c. 10.

In order to encourage improvement in agriculture, horticulture, manufactures and the useful arts, district and township agricultural societies may be formed. Horticultural societies are formed, as their name implies, to encourage improvement in horticulture. Legislative grants are made to these societies, and they are encouraged to hold fairs and give prizes for farm stock and machinery, for the production of grain, and of all kinds of vegetables, plants, flowers and fruits. Other societies for similar purposes, such as creameries, poultry associations, the Fruit Growers' Association, beekeepers, sheep and swine breeders, have all received legislative recognition, and are entitled to grants of public money under certain conditions. Farmers' Institutes for the purpose of disseminating information with regard to agriculture may also be formed, and may also receive public assistance. Thus the law does not overlook the just claims to attention of those who must after all always be the mainstay of the Canadian nation. Ibid c. 11.

The present would seem also to be a fit place to notice what protection the law gives to the workingman, and how it strives to conciliate disputes between him and his employer. But we shall have occasion to consider these points later on, and mention them now only to show that modern legislation has not been in favour only of the great and wealthy, but also has been extended to protect the toiler who earns his bread by the sweat of his brow. There must always be gradation of ranks, but the boast of our constitution is that its endeavours are directed to produce that state of society of which it was said that the rich man helped the poor, and the poor man loved the rich. Matters are yet far from that ideal, but much true and honest effort has been given to bring about such a result, and those efforts are contained in the prosaic form of the statute law to which I shall hereafter allude.

*Statutes Relating to Matters Discussed in Preceding Section.*

PAGE

- 240..Oath of Allegiance—R. S. C. c. 112.  
 241..Naturalization—R. S. C. c. 113.  
 244..Indians—R. S. C. c. 43, 1887 c. 33; 1888 c. 22; 1890 c. 29; 1891 cc. 5, 30; 1894 c. 32; 1895 c. 35.  
 251..Indians' Advancement—R. S. C. c. 44, 1890 c. 30.  
     Ontario Statutes relating to Indians are mentioned in side note page 251.  
 254..Militia—R. S. C. c. 41.  
 258..Registration of Ships—R. S. C. c. 72.  
 260..Inland Shipping—R. S. C. c. 75, 1893 c. 24.  
 261..    Safety of Ships—R. S. C. c. 77, 1889 c. 22; 1891 cc. 37, 38; 1894 c. 44.  
 261..    Navigation of Canadian Waters—R. S. C. c. 79.  
 261..    Wrecks—R. S. C. c. 81, 1893 c. 23.  
 261..    Coasting Trade—R. S. C. c. 83.  
     Other Statutes relating to Maritime Matters not touched upon in the text, are R. S. C. caps. 70, 71, 73, 74, 76 to 88 inclusive.  
 262..Medical Profession—R. S. O. c. 148, 1891 cc. 26, 27; 1893 c. 27; 1895 c. 28.  
     Anatomy Act—R. S. O. c. 149, 1889 c. 24.  
 264..Land Surveyors—R. S. O. c. 152.  
     Dentists—R. S. O. c. 151, 1891 c. 28; 1892 c. 33.  
     Druggists—R. S. O. c. 151, 1889 c. 52; 1891 c. 29; 1893 c. 28; 1894 c. 45; 1895 c. 29.  
     Architects—1890 c. 41.  
     Veterinary Surgeons—1895 c. 30; 1896 c. 15.  
     Stenographic Reporters—1891 c. 30.  
     Stationery Engineers—1891 c. 31.  
 267..Farmers—Department of Agriculture—(Dom.) R. S. C. c. 24 (see page 67, ante).  
 267..Agriculture and Arts—(Ontario) 1895 cc. 10, 11; 1896 c. 14.  
 267..Agricultural College—R. S. O. c. 233.

See page 267.

[PART I

## CHAPTER I.

SECTION 2—*Continued.*

## RELATIVE RIGHTS OF PERSONS (PUBLIC).

## MUNICIPAL INSTITUTIONS.

## 1. ORGANIZATION OF MUNICIPALITIES.

VILLAGE, INCORPORATION OF.  
TOWN, ERECTION OF VILLAGE INTO.CITY, ERECTION OF TOWN INTO.  
ADDITION TO LIMITS.

TOWNS, WITHDRAWAL OF, FROM COUNTY.

TOWNSHIPS, HOW FORMED.

UNION OF COUNTIES, DIVISION OF, JUNIOR COUNTY, PROVISIONAL SENIOR COUNTY.

## 2. ALL MUNICIPALITIES GOVERNED BY COUNCILS—COUNTY, CITY, TOWN, INCORPORATED VILLAGES, TOWNSHIPS.

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ELECTIONS OF MEMBERS OF COUNCILS.

Who may vote.

Mode of election.

VACANCY IN OFFICE.

POWERS OF MUNICIPALITIES.

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QUASHING BY-LAWS.

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DEBENTURES, REQUISITES FOR—  
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Exemptions.

Property Owned by Non-residents.

2. HOW PROPERTY MAY BE ASSESSED.

Assessors — Assessment Roll.

How Land must be Assessed.

Mineral Lands — Vacant Land.

Land of Railway Companies.

How Personal Property must be Assessed.

Statements to Assessors.

1891 cc. 5,

ote page 251.

1894 c. 44.

upon in the e.

895 c. 28.

28; 1894 c.

e page 67,

Time for returning roll.	Alteration of Boundaries.
Appeals from Assessment to Court of Revision.	Unions of.
to County Judge.	In Cities, Towns and Incorporated Villages.
Appeals by Non-residents.	Number of Trustees—
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Statute Labor.	In Townships.
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How Taxes Recoverable.	Teachers—Examinations.
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Adjourned Sale.	How far Attendance Compulsory.
Rights of Purchaser.	Employment of Children Prohibited.
How Redeemed.	High Schools.
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Township Boards.	

## MUNICIPAL INSTITUTIONS.

Municipal  
Government.

The next public relation in which the inhabitants of Ontario stand to one another, is that of their municipal government. As men form communities, special laws are required for the regulation of these communities. Roads and bridges must be built and maintained—property must be guarded—public health must be cared for—public morals must be protected. All of this work can not be done without expense. Further, the state in Ontario considers itself bound to furnish education at public cost. For all of these purposes, therefore, the public must be taxed. The management of the funds raised must be confided to somebody. The analogy of the public revenue and expenditure is followed, and a representative system for local or municipal purposes has also been adopted. It is this system we must now

consider. We have to commence with the mode in which a municipality is created—how its governing body is organized—what powers are confided to that governing body—how the expenses of the municipality are provided for, and, next, what special laws are made relating to education. We must then investigate what laws have been passed to protect public morals, public health, public property, and other miscellaneous public rights and interests.

The municipal system of Ontario may be considered under three heads: (1) Organization. (2) The Management of Affairs. (3) Powers.

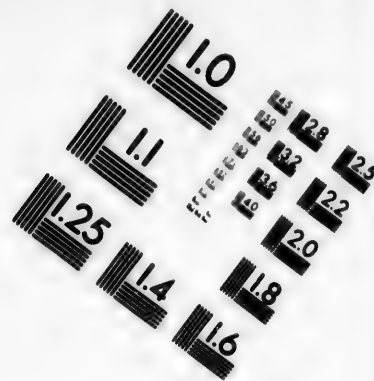
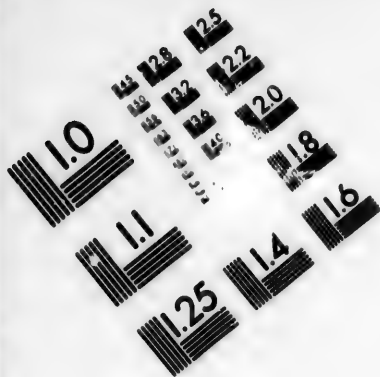
(1) As to Organization. The province is divided for municipal purposes into villages, towns and cities, townships, counties and unorganized districts. When the population of an unincorporated village with its immediate neighborhood amounts to 750 inhabitants, and when the residences of the people are sufficiently near to form an incorporated village, then, on petition of not less than 100 resident freeholders and householders of the village and neighborhood, who are over twenty-one years of age, and of whom not fewer than one-half must be freeholders, the county council of the county in which the village and neighborhood are situated must, by by-law, erect that village and neighborhood into an incorporated village.

When the incorporated village contains over two thousand inhabitants, the village may be erected into a town; when a town contains over fifteen thousand inhabitants, the town may be erected into a city.

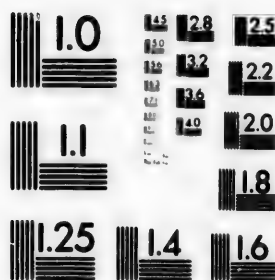
The Lieutenant-Governor by proclamation declares the change and gives a name to the new municipality.

No town or village, the population of which does not exceed one thousand souls, can occupy an area of more than five hundred acres.

No town or village can make any further addition to its limits or area, except in the proportion of not more than two hundred acres for each additional one thousand people subsequent to the first one thousand.



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The land occupied by streets or public squares may be excluded in estimating the area of the town or village. An incorporated village or town may annex itself to an adjacent village, town, or city, and the Lieutenant-Governor by proclamation declares the new municipality erected. In like manner, towns may be withdrawn from the jurisdiction of the county council, and in such case the liabilities of the respective municipalities and their respective assets may be settled by arbitration.

Townships are laid out by Government surveys, and from these townships grow counties. The Lieutenant-Governor can by proclamation form into a new county any new townships not within the limits of an incorporated county, and may include in the new county unincorporated townships or other adjacent unorganized territory, so long as it is not within an incorporated county, and may annex the new county to any adjacent incorporated county. Where there is a union of counties, the county in which the county court house and gaol are situated is called the senior county, and the other county or counties of the union are called the junior county or counties. During the union, all laws applicable to counties apply as if the counties formed but one municipality. When the census returns show that the junior county contains twenty-five thousand inhabitants, then, on petition of the reeves and deputy reeves, the Lieutenant-Governor may separate provisionally the junior county and make it a separate municipality. The various officials are then appointed by the junior county provisionally, and all questions between the former union and the new county are settled by arbitration. The Lieutenant-Governor then by proclamation separates the junior county and declares the day when the separation takes effect. As soon as this is done the provisional council and provisional officers of the junior county become the council and officers of the new corporation.

Management of  
affairs in  
Municipalities.

(2) Management of Affairs in Municipalities. All municipalities are governed by councils. In counties the council consists of the reeves and deputy reeves of the townships and villages within the county,

and of any towns within the county which have not withdrawn from the jurisdiction of the county council; one of the reeves or deputy reeves is appointed warden.

County Councils are hereafter to be composed as follows: County Councils.

(a) If the population of the county is 25,000 or less, of not less than 8 members nor more than 10 members. 59 Vict. c. 52.

(b) If the population is more than 25,000, but less than 40,000, of not less than 10 members nor more than 12 members.

(c) If the population is 40,000 or more, but less than 60,000, of not less than 12 members nor more than 14 members.

(d) If the population is 60,000 or more, of not less than 16 members nor more than 18 members.

For the purposes of the election of county councillors, each county must be divided into districts or divisions, to be known as "County Council divisions," as follows:— County Council divisions.

(a) If the population of the county is 25,000 or less, into not less than 4 and not more than 5 divisions.

(b) If the population is more than 25,000, but less than 40,000, into not less than 5 and not more than 6 divisions.

(c) If the population is 40,000 or more, but less than 60,000, into not less than 6 nor more than 7 divisions.

(d) And if the population is 60,000 or more, into not less than 8 nor more than 9 divisions.

The election for county councillors is to be held in alternate years. No member of the council of a local municipality, and no clerk, treasurer, assessor, or collector, is eligible for nomination or election as a county councillor. Nominations are to be made on the Monday in the week before polling day. The polling day is to be the same as for councils of the local municipalities. If there is not an election by acclamation by reason of a nomination of exactly the requisite number of candidates, then an election is held like all other municipal

elections. The county clerk and clerks of the local municipalities act as returning officers. The division of the counties is made by commissioners appointed by the Lieutenant-Governor.

City  
Council.  
55 Vict.  
c. 42.

In cities the council consists of the mayor, who is the head, and three aldermen for each ward. In the city of Toronto four aldermen are elected from each ward, and they may be paid for their services.

In cities having a population of 100,000 or over, there is to be a Board of Control, to consist of the mayor and three aldermen. The duties of the Board are to prepare estimates for civic expenditure, award contracts and control officers of the corporation.\*

Town  
Council.

In towns the council consists of the mayor, who is the head, and of three councillors for each ward where there are less than five, and of two councillors for each ward where there are five or more wards. If the town is not withdrawn from the jurisdiction of the council of the county in which it lies, then a reeve is added, and if the town has five hundred electors, then a deputy reeve is added, and for every five hundred additional electors an additional deputy reeve.

Village  
Council.

In incorporated villages the council consists of one reeve, who is the head, and four councillors, and if the village has five hundred electors, then of a reeve, deputy reeve and three councillors, and for each additional five hundred electors an additional deputy reeve instead of councillor.

Township  
Council.

The council of a township consists of a reeve and four councillors, one councillor being elected for each ward, where the township is divided into wards, and the reeve is elected by a general vote. If the township has five hundred electors, then the council consists of a reeve, deputy reeve and three councillors, and for each five hundred additional electors, an additional deputy reeve is elected instead of a councillor.

Qualifica-  
tions for  
members  
of council

No person can serve as mayor, alderman, reeve, deputy reeve or councillor, unless he reside within the

\* 59 Vict. c. 51, secs. 33, 34.

municipality, or within two miles of it. He must be a natural born or naturalized subject of the King, and must be over twenty-one years old; he must have at the time of election, as proprietor or tenant, a legal or equitable freehold or leasehold, or partly freehold and partly leasehold, or partly legal and partly equitable, to at least the following amounts over and above any charge, lien, or incumbrance: In incorporated villages, freehold to two hundred dollars, leasehold to four hundred dollars; in towns, freehold to six hundred dollars, leasehold to twelve hundred dollars; in cities, freehold to one thousand dollars, leasehold to two thousand dollars; in townships, freehold to four hundred dollars, leasehold to eight hundred dollars. Certain officials and other persons are disqualified from being members of councils; they are Judges, gaolers, sheriffs, constables, municipal assessors, collectors, treasurers, clerks, also county Crown attorneys, registrars, deputy clerks of the Crown, County Court clerks, clerks of the peace and high school trustees, license commissioners, or inspectors of licenses, and police magistrates. The above persons are disqualified by reason of official position. The following are disqualified by reason of occupation: Innkeepers, saloon-keepers, shopkeepers licensed to sell spirituous liquors by retail. The following persons are disqualified by reason of interest: Any person having by himself or his partner an interest in any contract, with or on behalf of the corporation, or any claim, action or proceeding against the corporation; any person who is counsel or solicitor in the prosecution of any claim, action, or proceeding against the municipality.

Disqualifications for membership in councils.

Certain persons are exempted from serving as members of council, namely, members of Parliament, of the Senate, of the Legislative Assembly of Ontario, civil servants, Judges, coroners, clergymen, all members of the Law Society of Ontario, all officials of Courts of justice, all medical men, university professors, schoolmasters, millers and firemen.

Exemptions from serving as members of council.

The members of the councils are all elected annually on the first Monday in January. The right of

Elections of members.

voting at elections of these members belongs to the following classes:

Who may  
vote.

(1) All persons who are freeholders in their own right, or whose wives are freeholders.

(2) All residents of the municipality who have resided for one month next before the election, and who are, or whose wives are, householders or tenants in the municipality.

(3) All residents of the municipality who have continuously resided therein since the completion of the last revised assessment roll, and who are in receipt of an income from some trade, office, calling, or profession, of not less than \$400.

(4) All residents of the municipality who are farmers' sons and have resided on the farm of their father or mother for twelve months next prior to the return by the assessors of the assessment roll on which the voters' list used at the election is based. A farm must not be less than twenty acres. Absence for four months in a year does not disqualify. Persons in default for payment of their taxes cannot vote at any election. Every occupant of a separate portion of a house, such portion having a distinct connection with the public road or street by an outer door, is a householder.

The persons who are thus qualified to vote at municipal elections, whether men or unmarried women or widows, must be of the full age of twenty-one years, and subjects of the King by birth or naturalization. They must be rated on the revised assessment roll upon which the voters' list used at the election is based for real property held in their own right, or, in the case of married men, held by their wives or for income, and they must have received no reward, and have no expectation of a reward for voting. In order to entitle a person to vote with respect to real property, it must be rated at an actual value of not less than the following: In townships and incorporated villages, \$100; in towns where the population does not exceed three thousand, \$200; where over, \$300. In cities, \$400.

Elections of members of councils are held on very much the same principle as those of members of Parliament; the voting is by ballot, and a re-count may be obtained, and generally speaking, what has been said with regard to elections for members of the Legislative Assembly will apply to the elections of members of municipal councils; the differences in detail need not be specified here.

Mode of election.

The seats of members of council become vacant by crime, insolvency, or three months' absence from the council. If a member loses his seat and omits to vacate it, proceedings by quo warranto to unseat him may be taken. Members of council may resign their office, and vacancies are filled by elections of new members. The officers of municipal corporations are clerk, treasurer, assessors and collectors, auditors, and, if necessary, valuers. All these officers must make certain declarations, and the council is empowered to take the bonds of guarantee companies as their security; gratuities may be given them for good services.

Vacancies in Council.

Officers.

3. I have thus dealt with the two first matters relating to municipalities, namely, their organization and the composition of the executive managing bodies who direct municipal affairs. I now come to the third heading, namely, the powers of councils. Their jurisdiction is exercised in respect of finance, issuing of debentures, the administration of justice and judicial proceedings. Every council is confined to its own municipality, except as to drainage matters, and the powers of the council must be exercised by by-law. No council can allow any monopoly, but may grant exclusive privileges in any ferry other than one between a province of the Dominion of Canada and any British or foreign possession, or between two provinces of the Dominion. By-laws may be passed for all of the purposes to carry out which the council is organized. These by-laws may be objected to by rate-payers, and in certain cases require the assent of the electors of a municipality before their final passing. These cases will be referred to later on. Where there

Powers of Councils.

By-laws.



is a by-law to be submitted to the ratepayers the vote of those entitled to vote is taken by ballot in the same way as in the case of elections. The persons who are entitled to vote on such by-laws are as follows:

Persons  
entitled to  
vote on  
by-laws.

(1) Every ratepayer, being a man, unmarried woman or widow, who at the time of tender of the vote is of the full age of twenty-one years, and a natural born or naturalized subject of His Majesty; he must have neither directly nor indirectly received, nor be in expectation of receiving any reward or gift for the vote which he tenders; he must be at the time of the tender of the vote a freeholder in his own right, or his wife must be a freeholder of real property within the municipality, of sufficient value to entitle him to vote at any municipal election. He must be rated on the last revised assessment roll, provided his name appears in the voters' list of electors.

(2) A leaseholder, being a man, unmarried woman or widow, to be entitled to vote, must be, or, if a man, his wife must be, a leaseholder of real property within the municipality of sufficient value to entitle him to vote at a municipal election; he must be rated on the last revised assessment roll therefor; his lease must extend for the period of time within which the debt to be contracted or the money to be raised by the by-law is made payable; and in his lease he must have covenanted to pay all municipal taxes in respect of the property leased. His name must appear in the voters' list.

Applica-  
tions to  
quash by  
laws.

If no application is made to quash a by-law within three months after its publication in a public newspaper for three successive weeks, then the by-law, notwithstanding any want of substance or form either in the by-law itself or in the time or manner of passing it, is a valid by-law. In order to quash a by-law an applicant must apply to the High Court of Justice. No application can be heard by the Court unless it is made within one year from the passing of the by-law, except in the case of a by-law requiring the assent of electors or ratepayers, when the by-law has not been submitted to, or has not received the assent of the electors or ratepayers; in the latter case an application to quash the by-law

may be made at any time. Before determining an application to quash a by-law on the ground of bribery or other illegal practices, the Judge of the High Court may direct an inquiry before a Judge of the County Court; the latter thereupon takes the necessary evidence and returns it to the High Court Judge, who, if he is satisfied that there are grounds for so doing, may make an order to quash the by-law. If a by-law is illegal, in case anything has been done under it which by reason of the illegality gives any person a right of action, no action can be brought until one month after the by-law has been quashed. Further, one month's notice in writing of the intention to bring the action must be given to the corporation, and the action must be brought against the corporation alone, and not against any person acting under the by-law. The corporation may tender amends to the plaintiff, and if no more than the amount tendered is recovered, the plaintiff can get no costs, but costs are taxed to the defendant and set off against the verdict, if any. By-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the ratable property of the municipality, may be passed for any purpose within the jurisdiction of the council. These by-laws must comply with certain requisites; they can only be made payable in twenty years at furthest; unless the debt is contracted for gas or water works, or railways, or harbour works, or improvements; when they can be made payable in thirty years at furthest. The rate of interest must be estimated at not more than five per cent. per annum, to be capitalized yearly. The by-law must provide that an annual sum shall be raised and levied in each year by a special rate sufficient therefor on all the ratable property of the municipality; or, if the by-law is for a work payable by local assessment on all the property ratable under the by-law, or per foot frontage, as the case may be. The by-law must have also appropriate recitals therein, and must set out the amount and object of the debt, the amount to be raised annually, the value of the ratable property, the amount of the existing debenture debt, and the

Actions  
for matters  
done under  
illegal by-  
laws.

By-laws  
for con-  
tracting  
debts.

Assessments under by-laws, lien on land.

By-laws requiring assent of electors.

County council by-laws for contracting debts.

Annual estimates.

special rate, if the by-law be for a special rate, and stating that the money is raised on that security only. Ample powers are given to the council as to the mode of making the debt repayable by annual instalments. Every special assessment made under a by-law becomes a charge upon the real estate upon which the rate is assessed, and is collected in the same way as ordinary taxes are collected.

I stated that certain by-laws required the assent of the electors. These by-laws are those for raising upon the credit of a municipality any money not required for its ordinary expenditure and not payable within the same municipal year. In counties the county council may raise by by-law, without submitting it for the assent of the electors, any sum not exceeding in any one year \$20,000 over and above the sums required for its ordinary expenditure. Where a county and city are united for judicial purposes the council for the county or city may by by-law, passed without being submitted to the electors, raise such sums of money as may be required for building and furnishing a court house and offices, and for acquiring such land as may be necessary. A by-law of the county council for contracting a debt for an amount not exceeding in any one year \$20,000 over and above the ordinary expenditure can only be passed at a special meeting of the council held for the purpose of considering the same, and after publication of the proposed by-law in the public newspaper in the county. When a debt has been contracted the council cannot repeal the by-law under which the debt was contracted or alter it in any way until the debt has been paid. All by-laws passed by a municipality for the contraction of any debt by the issue of debentures for a longer term than one year, and for levying rates for that purpose, must be registered by the clerk of the municipality in the local registry office. Notice of the passing of every by-law which has not been submitted to the ratepayers must, immediately after the registration of the by-law, be published in some newspaper.

The council of every county or local municipality must every year make estimates of all sums which

may be required for the lawful purposes of the county or municipality for the year in which such sums are required to be levied, making due allowances for the cost of collection and of the abatement and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. Further, the council of every corporation must assess and levy on the whole ratable property within its jurisdiction a sufficient sum in each year to pay all valid debts of the corporation, whether of principal or interest, falling due within the year; but no council can assess and levy more than an aggregate rate of two cents in the dollar of the actual value, exclusive of school rates. If the sums collected exceed the estimates, the balance forms part of the general fund of the municipality, and will be at the disposal of the council unless otherwise specially appropriated. If any portion of the amount in excess has been collected on account of the special tax in any particular locality, the amount in excess collected on account of the special tax must be appropriated to some special local object. Taxes are computed from the 1st of January of each year, and are considered to have been imposed and to be due from that date. Debentures and other instruments duly authorized to be executed on behalf of the municipal corporation must be sealed with the seal of the corporation, and signed by its head or some other person authorized by by-law to sign it. Debentures issued in aid of any railway, or for any bonus, signed or indorsed and countersigned as directed by the by-law, are valid and binding on the corporation without the corporate seal or the observance of any other form with regard to the debentures than those directed by the by-law itself.

Annual  
levy by  
councils.

Debentures.

With regard to the jurisdictions of councils over the administration of justice and judicial proceedings: the jurisdiction of municipalities on this point relates to the recovery and enforcement of penalties, and to the police of the municipality. The head of every council and the reeve of every town, township, and incorporated village

Adminis-  
tration of  
justice.

is a justice of the peace, and aldermen in cities are justices of the peace virtute officii. As to police, as already stated, the council of every city and town must establish a police office, and the police magistrate, or, if there is no police magistrate, the mayor of the town or city must attend daily to dispose of the business necessary. In every city there is a board of commissioners of police, as has also been started elsewhere, where their duties are explained.\* Every county council may pass by-laws for erecting, improving and repairing a court house, gaol, house of correction, and the house of industry upon land which is the property of the municipality, and must keep them in repair and provide the necessary supplies; they may establish lock-up houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any by-law of the council. The council of every city and town may establish a workhouse or house of correction, and may pass by-laws for committing vagrants until separate houses of correction are erected. The common gaol of each county is a house of correction for idle and disorderly persons, or rogues and vagabonds and incorrigible rogues, and any other person subject to be committed to a house of correction must be committed to the common gaol.

Investigations by County Judge.

If the council of any municipality at any time passes a resolution requesting the Judge of the County Court to investigate any matter to be mentioned in the resolution relating to a supposed malfeasance, breach of trust, or other misconduct on the part of any member of the council or officer of the corporation, or any person having a contract therewith in relation to the duties or obligations of the member, officer, or other person to the municipality, or in case the council sees fit to cause inquiry to be made into or concerning any matter connected with the nature of the government of the municipality of the conduct of any part of its public business, and if the council passes a

\* See page 236, *ante*. By 59 Vict. c. 51, sec. 31, licensing powers are transferred to the Police Commissioners.

resolution requesting the Judge to make the inquiry, then the Judge must inquire into the matter. He proceeds under the Act respecting Inquiries Concerning Public Matters,\* and reports to the council the result of the inquiry.

The powers of municipal councils as to domestic economy vary with the different councils. Township councils have, for instance, certain exclusive powers, such as the commutation of statute labour, and for licensing and regulating ferries between any two places within the township. Counties, in the same way, have exclusive powers of passing by-laws for creation of a board of audit. Generally speaking, the powers of all municipalities are the same in nature; they may obtain property, appoint officers, aid manufacturing establishments, road companies or agricultural societies; they have general supervision over all the domestic economy of the municipality. If a council passes a by-law relating to any matter within its control, they have the further power of directing that in default of obedience to the by-law, whatever is required to be done may be done at the expense of the person in default, and the expense of so doing may be recovered with costs by action or distress; in case of non-payment the amount is to be recovered in the same way as taxes. The various matters of domestic economy over which councils have jurisdiction include victualling houses, licensing traders, cemeteries, schools, cruelty to animals, fences, water-courses, filth in streets, public morals, inspection of meat, etc.; generally all matters relating to the well-being of the municipality. Councils of counties, cities and separated towns have the right of making a permanent provision for defraying expenses of the attendance at the University of Toronto and at Upper Canada College of such of the pupils of high schools of the county as are unable to incur the expense but are able to compete for any scholarship or other prize offered by the university or college. They may also endow fellowships,

Powers of councils.

Enforcing obedience to by-laws.

Foundation, scholarship.

\* See page 66, *ante*. The enquiry may now be held by one of the Provincial Municipal Auditors under 59 Vict. c. 51.

Roads and  
road al-  
lowances.

scholarships, or exhibitions in the University of Toronto, or Upper Canada College, for competition among the pupils of the high schools of the county. So far, this power has not been yet made use of, but it is desirable to call attention to it in the hope that it may some day be taken advantage of. Markets, livery stables, cab stands, bathing and boathouses, intelligence offices, industrial farms are all placed under the jurisdiction of the various councils. Roads may be opened or diverted, or stopped up by councils; tolls may be charged on bridges or roads by the council having jurisdiction over them. Original road allowances may be stopped up and sold to the owners of any adjoining land, and where a road has been substituted for an original allowance without compensation, the person whose land is taken is to be entitled to the original road. If a road allowance is useless to the public and lies between lands owned by different persons the council can sell and convey a part to each of those persons. If a person has been in possession of any part of a Government allowance for a road laid out adjoining his land and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or if he is in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu of the Government road, then the person who is in possession of the Government allowance is held to be legally possessed of it until a by-law for opening it has been passed by the council. The county council has power, on petition of a majority of the ratepayers interested, to compel township councils to repair township boundary lines, and in case of dispute as to payments or amounts chargeable, the matter is settled by arbitration.

Local  
Improvements.  
1. Drainage.

One of the principal powers of municipal councils is that of charging lands with improvements which are paid by local rate. The first kind of improvement is that relating to drainage. If the majority in number of the owners of property to be benefited petition the council for the deepening or straightening of any stream, creek, or watercourse, or for draining of any property,



or for the removal of any obstruction from any stream or creek, or for the lowering of the waters of any lake for the purpose of reclaiming or more easily draining any land, the council, on an examination by its engineer, may pass by-laws for doing the work. These by-laws must provide for the requisite funds, which may be obtained by the sale of debentures to the requisite amount in sums of not less than \$100 each, running for twenty years, with interest at not less than four per cent. per annum. A special rate sufficient for the payment of the principal and interest of the debentures and other expenses is levied on the real property to be benefited in proportion as nearly as possible to the benefit derived by the properties in question. If any person considers himself aggrieved, the complaint will be disposed of before the Court of Revision in the same way as under the Assessment Act any other complaint against taxation is disposed of. The by-law must be published in a newspaper for four weeks in the municipality or served on the property owners instead of being published. Notice of intention to quash the by-law must be made within ten days of the final passing, and must be brought on before the High Court of Justice at Toronto within six weeks after that day. If the works do not extend beyond the limits of the municipality in which they are commenced, but in the opinion of the engineer benefit lands in an adjoining municipality, or greatly improve any road lying within any municipality, or between other municipalities, then the engineer must charge the lands so benefited and the corporation whose roads are improved with such proportion of the expense as he thinks right. The council of the municipality in which the work is to be commenced must serve the head of the council of the other municipality with a copy of the engineer's report. If the other council is dissatisfied, it may within twenty days after the report so received appeal; the matter is then settled by arbitration. The municipality which makes the work must preserve and keep it in order at the expense of the real property which is benefited. Where the work proposed to be constructed affects more than one municipality, either on

account of the works passing or partly passing through two or more municipalities, or on account of the lowering or raising of the waters of any lake which is contemplated in the proposed scheme of drainage for draining or flooding lands in two or more townships, then the county council of the neighbourhood to which the municipalities belong may, upon the application of the council of any of the municipalities affected, and without any preliminary petition from the owners of the property to be benefited, pass by-laws for the doing of all such work. If the municipalities upon which the interest of the tax would fall are in several counties, any of the counties may have similar examinations made by their own engineer, and assessment made by him of the real property benefited in the municipality. If ten of the owners of the property assessed then petition the council not to proceed with the work, the council must take a vote of the persons assessed upon the question whether or not the work shall be proceeded with. If a vote has been taken, and it is in favour of proceeding with the work, or if a vote has not been taken, then after the time for presenting the petition has elapsed, if the council or councils of the counties upon which two-thirds of the cost of the work fall pass a resolution to the effect that it is desirable to proceed therewith, the council which caused the survey to be made may serve upon the other county a notice with a requisition of appeal requesting that county to state whether or not it is content to accept the assessment made as showing the proper proportion to be borne by such county, and notifying them that if dissatisfied with such assessment they must within thirty days appeal. This matter is like others, then settled by arbitration. When disposed of each county interested must pass a by-law to raise the sum chargeable against the county in accordance with the proportions fixed by the report of the engineer as finally settled. The assessment must be upon the real property within the county to be benefited by the works. These drainage clauses of the Municipal Act are in addition to those contained in the Ontario Drainage Act and the Ditches and Watercourses Act.

Besides drainage works, the other matters for which councils may pass by-laws providing for payment by local rate are as follows: For deepening any creek, stream, or watercourse, and draining any locality, or for sewers, or for deepening, widening, prolonging, altering, macadamizing, curbing, levelling, paving, or planking any street or lane, or of constructing any sidewalk, bridge, culvert, or embankment forming part of a highway, or curbing, sodding, or planking any street, lane, alley, or other public place or square. The council for these purposes ascertain and determine what real property will be immediately benefited by the proposed work or other improvement; they also ascertain and determine the proportions in which the assessment of its cost is to be made on the various portions of real estate. The special rate to be assessed and levied is an annual rate according to the frontage upon the real property fronting or abutting upon the street or place upon which the improvement is to be made. These works must be independent of any work of ordinary repair or maintenance, and when constructed they must be kept in good and sufficient state of repair at general expense. There are three modes in which the council may undertake the work: first, by petition; second, on sanitary grounds; third, on the initiative. (1) By petition.—On the receipt of a petition asking for any of the works above mentioned, signed by at least two-thirds in number of the owners of any real property to be benefited thereby, according to the last revised assessment roll of the municipality, if such owners represent at least one-half in value of the real property, then the council may take steps for the execution of the work. A leaseholder whose term extends over a period which is not less than the duration of the proposed assessment, if he has covenanted in his lease to pay taxes, may be a petitioner. The owner of the property in fee in this case cannot have any say in the matter, but in townships only the owner in fee can petition and not leaseholders. (2) Again, if on sanitary grounds the council, by a two-thirds vote at any regular meeting, affirms that it is desirable and necessary in the public interest to construct, make, enlarge

2. Other matters paid for by local rates.

Frontage rate.

Modes in which councils may undertake works payable by local rate.

or prolong a drain, sewer, or sewers, for the purpose of draining a particular locality for sanitary or drainage purposes as a local improvement, the council need not give notice of the proposed assessment for such local improvement, except of the sitting of the Court of Revision for the purpose of hearing complaints against the proposed assessment. (3) On the initiative.—Any of the works above mentioned may be undertaken by the council, and the assessment of the cost may be made upon the properties benefited, unless the majority of the owners of the real property rating at least one-half in value petition the council against it within one month after the last publication of a notice of the intention of the council to undertake the work. If the petition against the work is sufficiently signed, then no second notice for the same work can be given by the council within two years thereafter. Notice of the by-law must be given to the owners and lessees having the right to petition containing a general description of the property, the nature of the improvements, the cost, the amount of assessment, the time and manner in which the same is payable; it must be signed by the clerk or assessment commissioner, and mailed to the address of the person fifteen days before the day appointed for the sitting of the Court of Revision. Ten days' notice of the sitting of the Court must also be published in some newspaper. If the special rate is to be an annual rate according to the frontage of the real property fronting or abutting on the street where the improvement is to be done, the council must procure a measurement of the frontage liable to the assessment and keep a statement of this frontage open for inspection in the office of the clerk of the municipality for at least ten days before its final decision. There is the same right of appeal to the Court of Revision, and from the Court of Revision to the County Judge, as in the case of drainage improvements, and the proceedings on these appeals take the same course as those under the Assessment Act. Councils may borrow funds for the purpose of going on with these works, and all sums advanced for any special purpose must be charged eventually against the total cost of the

work. It is not only property immediately lying upon the street which may be assessed, but any property extending to within six feet of the street or place in question; corner lots and irregularly shaped pieces of land, and land unfit for building purposes, may be relieved from undue taxation.

If a bridge or culvert is constructed on any street, lane, or alley, and the council considers that it is equitable to charge the whole of the cost of the improvements on the lands fronting upon the street, other lands benefited by the work or improvement may be charged with their share of the work. In like manner, the whole of the municipality may be charged with the expense if the council considers it equitable.

The last remaining power of municipal councils to be mentioned is that whereby they are allowed to assist railways; the council may take stock or guarantee the payment of debentures, or issue their own debentures, or grant bonuses to any railway company, but no debt or liability can be incurred, except with the consent of the electors of the municipality. If a council subscribes for stock in a railway company to the amount of twenty thousand dollars or upwards, then the head of the council is to be ex officio a director of the railway company, and has the same rights, powers and duties as the other directors. No grouping or joining together of municipalities, or part of one municipality with another, is now allowed, as it was found to be productive of much injustice.

In the districts of Algoma, Muskoka, Parry Sound, Nipissing, Manitoulin, Thunder Bay and Rainy River municipal institutions are also formed. Generally speaking they are on the model of other municipal corporations. The inhabitants of any township having a population of not less than one hundred persons may organize themselves into a township municipality. The inhabitants of any locality not surveyed into a township, not exceeding in area twenty thousand acres, and having a population of not less than one hundred persons, may also organize themselves into a township municipality.

Bridges and culverts, cost of, how to be charged

Aid to railways.

Municipal institutions in unorganized districts.

R. S. O. c. 185.

The brief sketch I have given will serve as a guide to the further study of the municipal system of Ontario. It is impossible within a limited space to do more than point out its principal features. It would be incomplete without some account of the mode of assessing property, and I propose now to give a short description of the manner in which property in Ontario is assessed for municipal purposes.

Assessment of property.

What property may be assessed.

Exemptions from taxation.

1. What property may be assessed. All municipal, local or direct taxes or rates must be levied equally upon the whole ratable property, real and personal, of the municipality, according to the assessed value of the property, and not upon two or more kinds of property in particular or in different proportions. Such is the general rule laid down by the Act; but I have just explained that councils may either on petition or on their own initiative charge certain improvements against particular properties, and collect from them only; this power is only an application of the general power of assessment to particular instances. There are some exemptions from taxation: (1) Property of public institutions, churches and cemeteries. (2) Incomes or pensions of persons in official positions; such as the Governor-General, Lieutenant-Governor, military and naval men, Imperial, Dominion and provincial pensioners. (3) Grain in store or warehouse for shipment, and horses and stock of a farmer or grazier. (4) The income of a farmer derived from his farm, and of merchants, mechanics or other persons from capital liable to assessment. (5) So much of the personal property of any person as is invested in mortgage on land, or is due him on account of the sale of land, or is invested in Dominion or provincial debentures, or municipal debentures, and also such debentures. (6) Shares in bank stock; any interest or dividends on bank stock are however assessable. (7) Stock in any incorporated company or railway company, or building society, or mortgage company; the interest from these shares can be assessed. (8) All personal property owned out of the province. (9) Personal property equal to the debt due on account thereof. (10) The net personal property of any person, provided it is under one

hundred dollars in value. (11) The annual income of any person derived from his personal earnings, provided it does not exceed \$700. (12) The annual income of any person to the amount of \$400 from any source other than personal earnings; but the total exemption on income account from all sources must not exceed \$700. (14) Rent from real estate, except interest on mortgages. (15) Household effects. (16) Vessel property; but the income from this property can be assessed.

All real property situated in the province, but owned out of the province, is liable to assessment as any other real property. All personal property within the province in the possession or control of any agent or trustee for any owner who is resident out of the province, is liable to assessment like any other personal property.

2. How property is assessed. The council of every <sup>Assessors.</sup> municipality except counties must appoint assessors; but no assessor or collector can hold the office of clerk or treasurer, and to these assessors and collectors are assigned certain districts. The assessors have what is <sup>Assessment roll.</sup> called the assessment roll, in which they place the names of all persons, whether resident or non-resident, who have taxable property; they must give full particulars as to the nature of the property, its description, quantity, etc., and also the capacity in which the person assessed is entitled to vote.\* They must specify further, whether the ratepayer claims to be a Roman Catholic separate school supporter or not. Land must be assessed in the <sup>Land.</sup> municipality in which it lies, and in the case of cities and towns, in the ward in which it lies. Personal property <sup>Personal property.</sup> must be assessed in the municipality in which it is situated, and against the person in possession or charge as well as the owner. Land must be assessed in the owner's name; if not occupied, and the owner is known, then it must be assessed against the owner alone. If occupied, against owner and occupant; if the owner of the land is not resident within the municipality, but resident within the province, then, if occupied, it must be assessed in

\* See page 188, ante.



Partnership assessment.

the name of and against the occupant and owner. If unoccupied, and the owner has not requested to be assessed therefor, then it must be assessed as land of a non-resident. If the real property is owned by a person not resident within the province who has not required his name to be entered on the assessment roll, then, if occupied, it is assessed against the occupant; if not occupied, it is assessed as non-resident. If land is assessed against both owner and occupant, or owner and tenant, both names are placed upon the roll. If land is owned or occupied by more persons than one, they are assessed in the proportions belonging to them respectively; if a portion of the land so situated is owned by persons who are non-resident, and who have not required their names to be entered on the roll, then the whole property must be assessed in the names furnished to the assessor as the names of the owners. If any member of a partnership so requests, his share in the partnership must be assessed as if it were his separate and individual property, and formed no part of the partnership property. Any occupant may deduct from his rent taxes paid by him, if they could have been recovered from the owner or previous occupant, unless there is a special agreement between the occupant and the owner to the contrary.

Mineral lands.

If mineral lands are to be assessed, the land and the buildings are to be estimated at the value of other lands in the neighbourhood for agricultural purposes, but income derived from any mine is subject to taxation in the same manner as other incomes.

Basis of taxation.

The general rule for the assessment of real and personal property is that they must be estimated at their actual cash value in the same way as they would be appraised in payment of a just debt for a solvent debtor. If vacant ground or ground used as a farm, garden or nursery, and not in immediate demand for building purposes, in cities, towns or villages is to be assessed, the rule for assessment is as follows: The value of the vacant land is to be taken as that at which sales of it can be freely made, and

Vacant land.

where no sales can be reasonably expected during the current year, the assessors must, in cities where the extent of the land exceeds two acres, and in towns and incorporated villages where the extent of the land exceeds ten acres, value the land as though it was held for farming or garden purposes, with such a percentage added as the situation of the land reasonably calls for. Even if the vacant land has been surveyed into building lots, if the lots are unsold, the block may be entered on the assessment roll by acreage. If ground is not held for the purposes of sale, but is bona fide enclosed, and used in connection with a house as a garden, lawn, or pleasure ground, it must be assessed with the house at a valuation which at six per cent. would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth. The land of railway companies is assessed on the same principles, and railway companies are required to transmit to the clerk of the municipality statements annually, showing their property.

58 Vict.  
c. 47, sec. 2  
59 Vict.  
c. 58, sec. 1

Gardens  
and lawns.

Railway  
companies.

The general rule as to assessing personal property is that no person deriving an income, not declared exempt, from any particular calling, office, profession, or other source whatsoever which is not specifically exempted, can be assessed for a less sum as the amount of his net personal property than the amount of his income during the last year over the exemptions. His last year's income in excess of the exemptions is held to be his net personal property, unless he has other personal property liable to assessment, in which case the excess of income and the other personal property are to be added together and constitute the personal property liable to assessment. A person who is beneficial owner of shares, but which do not stand in his name, can be assessed for the income from the shares as if they stood in his name. The personal property of persons who are not residents in the province is assessable like the personal property of residents, no matter in whose hands the property may

Basis of  
taxation  
on income.

Non-resi-  
dents  
liable to  
taxation.

Incorporated companies.

Partnership property.

Officials.

Non-resident.

be, but dividends which are payable to, or other choses in action which are owned by and stand in the name of the person not residing in the province, cannot be assessed. The personal property of an incorporated company must be assessed against the company on the same principles, but the personal property of a bank or of a company which invests the whole or principal part of its means in gas or water-works, plank or gravel roads, railway and tram roads, harbours or other works requiring investment of the whole or principal part of its means in real estate, is exempt from assessment, but the shareholders must be assessed on the income derived from the company. The personal property of partnerships must be assessed against the firm, and a partner cannot be assessed in his individual capacity for any share of any personal property of the partnership which has already been assessed against the firm. In respect of a partnership with more than one business locality, the partnership may choose at which locality the whole of the assessment shall be made. Any person who has a farm, shop, factory, office or other place of business, must, for all property owned by him, be assessed in the municipality or ward where he has his place of business; if he has more than one place of business, he must be assessed at each for that portion of his personal property connected with the business carried on; if this cannot be done, he must be assessed for part of his personal property at one place of business and part at another. If he has no place of business, he must be assessed at his place of residence. If a person holds any appointment or place to which a salary is attached, and performs the duties of the appointment within a municipality in which he does not reside, he must be assessed in respect of the amount of his salary at the place where he performed his duties, and he cannot be assessed at his place of residence. If the person holds a county municipal office, or a Government office in a minor municipality, when the location of the office is fixed, then the person must be assessed in the municipality where he resides. The personal property of a non-resident must be assessed in the name of

any person who is in the control or possession of it. In the case of property owned by joint owners, then each can be assessed for his share only; if personal property is in the sole possession of any person as trustee, guardian, executor, or administrator, it must be assessed against that person alone, and his representative character must be shown on the assessment roll.

All persons are required to give all necessary information to the assessors, and, if necessary, the assessor can require the statement to be made in writing. Corporations whose dividends are liable to taxation must furnish the assessor with a statement in writing, showing the names of the shareholders and the amount of stock and dividends declared. The assessor must make inquiries on his own responsibility as well as accepting statements made to him by persons interested. One of his principal duties is to prevent, by making inquiries, the creation of false votes before assessing or entering any person on the list. Assessors must begin to make their rolls in each year not later than the 15th of February, and the roll must be complete on or before the 30th of April. On the 1st of May the roll is delivered to the clerk of the municipality completed and added up, with the necessary certificates and affidavits. In cities,\* towns and incorporated villages the council may alter the above dates by passing by-laws for regulating them as follows: The assessment may be taken between the 1st day of July and the 30th of September; the roll must be then returnable on the 1st of October. In that case, the time for closing the Court of Revision must be the 15th of November; and for the final return by the Judge of the County Court, the 31st December. Taxes may be made payable by instalments, and municipalities may allow a discount for prompt payment, or may add an additional percentage charge for default. County councils may pass by-laws for taking the assessment in

Information must be given to assessors.

Time for making assessment.

\* In cities with a population over 30,000, the assessment may be made between the 1st of May and the 30th September. In cities with a population over 100,000, the assessment may be made by wards prior to the 30th September in each year. The Judge's revision then must be completed by the 20th October. 59 Vict. c. 58. See page 193, *ante*.

towns, townships and incorporated villages between the 1st day of February and the 1st day of July. If the time is extended beyond the 1st day of May, then the time for closing the Court of Revision is to be six weeks from the day to which the time is extended, and for final return in case of an appeal, twelve weeks. Except in these particular cases, the lists must finally be revised by the 1st of July.

Appeal  
from as-  
sessment.

After the assessors have handed in their assessment to the clerk, any person complaining of an error or omission, or overcharge or undercharge, may give notice in writing of his intention to appeal. This notice must be given to the clerk, or assessment commissioner, if there be any, within fourteen days after the day upon which the roll is required to be returned, or after the return of the roll, if the roll is not returned within the time fixed. Any elector may give notice in writing of his intention to appeal against the assessment of any other person. All complaints are entered in a list, and are disposed of in the order in which they appear. The matter is disposed of before what is called the Court of Revision. If the council of the municipality consists of not more than five members, then these five members are the Court of Revision; if the council consists of more than five members, then the council must appoint five of its members to be a Court of Revision.\* Three members form a quorum, and a majority of a quorum decide all questions; the clerk of the municipality is clerk of the Court. The first sitting cannot be held until after the expiration of at least ten days from the expiration of the time within which notice of appeals may be given to the clerk of the municipality. After hearing the complainant and the assessor and any witness adduced, and if deemed desirable, the party complained against, the Court determines the matter and confirms or amends the roll. The Court may increase the assessment or change it by assessing the

Court of  
Revision.

59 Vict.  
c. 58, sec. 3

\* In cities with a population over 30,000, the Court of Revision consists of three members, one of whom is appointed by the City Council, and one by the Mayor, the third is the official arbitrator. If there is no official arbitrator, the Sheriff is the third member. Two members make a quorum.

right person, the clerk giving the latter or his agent four days' notice of such assessment. Where there are palpable errors the Court may extend the time for making complaints ten days further.

From the Court of Revision there is an appeal to the County Judge; the person appealing must serve upon the clerk of the municipality or assessment commissioner within five days from the time limited for closing the Court of Revision a written notice of his intention to appeal to the County Judge. The clerk forwards a list of the appeals to the Judge, who notifies the clerk of the day appointed for hearing; the clerk then gives notice to all parties, and also posts up a notice in his office. The Judge hears the appeals and may adjourn the hearing and defer judgment, but all appeals must be determined before the 1st of August, except in the cases before mentioned. In all proceedings before the Judge, he has the same powers for compelling the attendance of witnesses and parties, and for their examination on oath, and for production, as in his ordinary Court. The decision of the Judge is final and conclusive; but where there is an appeal from any Court of Revision to the County Court Judge, and a person, partnership or corporation desiring to appeal has been assessed on one or more properties to an amount aggregating \$50,000, then the appellant has the right of having the appeal heard by a board consisting of the Judges of the counties, which constitute the County Court district, if the property assessed is in the county forming part of a County Court district; if not, then the appellant may request the County Court Judge to associate with himself another County Court Judge, and both Judges must hear the appeal in the same way as other appeals are heard. In order to secure uniformity of decision, the Lieutenant-Governor may refer a case on an assessment question to the Court of Appeal.

Appeal  
from  
Court of  
Revision.

57 Vict.  
c. 51.

If a non-resident whose land has been assessed complains by petition at any time before the 1st of May in the year next following that in which the assessment is made, then the council must, at its first meeting after

Appeals  
by non-  
residents.

one week's notice to the appellant, hear the complaint. If the lands are found to have been assessed twenty-five per cent. more than similar land belonging to residents, the council or Judge must order the surplus to be struck off.

Equaliza-  
tion of  
rates by  
county  
councils.

In counties, the county council must every year before imposing any county rate, and not later than 1st of July, examine the assessment rolls of the different townships, towns and villages in the county for the preceding financial year for the purpose of ascertaining whether the valuations made by the assessors in each township, town or village, bear a just relation one to another, and may for the purposes of the county reduce, increase, or decrease the aggregate valuations of real and personal property in any township, town or village, adding or deducting so much percentum as may, in their opinion, be necessary to produce a just relation between values of real and personal estate in the county; they must not reduce the aggregate values for the whole county as made by the assessor. If any municipality is dissatisfied with the action of the county council, they may appeal at any time within ten days after the decision of the council to the County Judge. If any party to the appeal has objected to the final equalization by the County Judge, the clerk of the county council must notify the Provincial Secretary; thereupon the Lieutenant-Governor in council may appoint two persons, one of whom must be the sheriff or registrar of the county in which the appeal is made, and the other a Judge of another county, who, together with the County Judge, form a Court, and this Court determines the matter and equalizes the assessment of the county. If all the parties to the appeal have agreed to the hearing of the matter by the County Judge, he is thereupon notified in writing by the clerk of the county council; on receipt of the notice he appoints a day for hearing the appeal, and disposes of it, so that judgment can be given not later than the 1st of August next after the appeal.

Statute  
Labour.

Every male inhabitant of a city, town or village, over twenty-one years of age and under sixty, who is



not assessed upon the assessment roll, or whose taxes do not amount to \$2, must, instead of statute labour, be taxed at \$1 a year therefor. No soldier or sailor on full pay, or on actual service, is liable to perform statute labour or to commute. No non-commissioned officer or private of the volunteer force certified by the officer commanding the company to which he belongs can be called upon for statute labour. Firemen are also exempted. In townships every male inhabitant between the ages above mentioned, who is not otherwise assessed, and who is not exempt by law from performing statute labour, is liable to one day of statute labour on roads and highways in the township. All councils may reduce or abolish statute labour. In townships every person assessed upon the assessment roll at not more than \$300 is liable to two days' statute labour; if from \$300 to \$500, three days; from \$500 to \$700, four days; from \$700 to \$900, five days; for every \$300 over \$900, or any fractional part of \$300 over \$150, one additional day. This tax may be commuted by the payment of one dollar a day; and it is collected and accounted for as all other taxes. Every farmer's son is liable to perform statute labour or commute. Any person liable to pay the tax in lieu of statute labour must pay the same to the collector within two days after demand. In case of neglect or refusal, the collector may levy the amount by distress on goods and chattels of the defaulter with costs of the distress. If no sufficient distress can be found, then the defaulter incurs the penalty of \$5 with costs; in default of payment he can be committed to the common gaol of the county and set to hard labour for any term not exceeding ten days. No non-resident, who has not required his name to be entered in the roll, can be permitted to perform statute labour, but the commutation tax is charged against the lands.

Collectors  
of taxes.

After an assessment is made and the taxes settled, the next step is the collection of the rates. For this purpose the clerk of every municipality must make out a collector's roll containing all information required to be entered by the collector; this roll contains the name of the person assessed, and the amount levied, and all

Duties of  
collector.

other particulars necessary to enable the collector to make the collection. In cities and towns the collector must call at least once on the person taxed, or at the place of his usual residence or domicile or place of business, and demand payment of the taxes payable; or he must leave with the person taxed or at his residence or place of business, or upon the premises, a written or printed notice specifying the amount of the taxes, and at the time of the demand must enter the date on his collection roll. In places other than cities and towns, he must call at least once on the person taxed, or at his usual residence or place of business, and must demand payment of the taxes from him. If a person neglects to pay his taxes for fourteen days after demand, or in case of cities and towns, after the demand or notice above mentioned, the collector may levy the taxes with costs by distress of the goods and chattels of the person who ought to pay, or on any goods and chattels in his possession, wherever they may be found. The costs chargeable are those payable to bailiffs under the Division Courts Act.\* If a collector has reason to be-

Collection  
of rates.

Exemption  
from  
distress for  
taxes.

\* 59 Vict. c. 58, sec. 6, is as follows:—In case of distress for the non-payment of taxes where the owner or person assessed is not in possession, the goods and chattels on the premises not belonging to the person liable for the taxes shall not be subject to seizure; but this restriction shall not apply in favour of a person claiming title under or by virtue of an execution against the person so liable, or in favour of any person whose title is derived by purchase, gift, transfer or assignment from the person so liable, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the person so liable in any goods on the premises belonging to him, or to the possession of which he is entitled, under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods have been exchanged between two persons so liable by the one borrowing or hiring from the other, for the purpose of defeating the claim of or the right of distress for the non-payment of taxes; nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the person so liable, or by any other relative of his, in case such other relative lives on the premises as a member of the family; and possession by the tenant of said goods and chattels shall be sufficient *prima facie* evidence that they belong to him.

It will be noticed that this section applies only to the case where the owner or person assessed is not in possession. If he is in possession the owner's goods are liable whether he is assessed for the lands or not.

If the taxes are due on rented premises, the tenant must pay the rent to the collector until the taxes are satisfied. (*Ibid.* sec. 8.)

Goods in possession of a warehouseman are protected by 58 Vict. c. 47, sec. 7.

lieve that any person by whom taxes are payable is about to remove goods or chattels out of the municipality before the fourteen days have expired, and makes an affidavit to that effect before the mayor or reeve of the municipality, or before any justice of the peace, the mayor or justice of the peace must issue a warrant to the collector authorizing him to levy for the taxes although the fourteen days have not expired. In the case of non-residence, the notice is sent by the collector by post. If the non-resident has required his name to be entered on the roll, the collector, after one month from the date of the delivery of the writ to him, and after fourteen days from the time of the transmission of the notice by post, may make distress of any goods and chattels which he may find upon the land; no claim of property, lien or privilege shall be available to prevent the sale. If the taxes payable by any person cannot be recovered in any special manner provided for, they may be recovered as a debt due to the local municipality. In towns, villages and townships, every collector must return his roll to the treasurer on or before the 14th of December in each year, or on such day in the next year, not later than the 1st of February, as the council may appoint, and pay over the amount payable to such treasurer, specifying how much of the whole amount is on account of each separate rate. If the collector fails or omits to collect the taxes, some other person may be appointed by the council in his stead. Taxes accrued on any land are a special lien on the land, having preference over any claim, lien, privilege or incumbrance of any person excepting the Crown, and does not require registration to preserve it. The treasurer of every county must furnish to the clerk of each municipality, except cities and towns, a list of all the lands in his municipality, in respect of which any taxes have been in arrear for the three years next preceding the 1st of January in any year. This list must be furnished by the 1st of February in every year, and is headed "List of lands liable to be sold for arrears of taxes in the year "

Collection from non-residents.

Return of roll.

Taxes a lien on land.

This list is kept by the clerk of the municipality in his office on file, and a copy is also delivered to the assessor

of the municipality. The assessor must then notify the occupants, and also the owners of the land, if known, that the land is liable to be sold for arrears of taxes; the list is then returned by the assessor to the clerk. On or before the 15th September in each year, the county treasurer must return to the clerk of each local municipality other than a city or town, and every city or town treasurer must return to the clerk of the city or town, an account of all arrears of taxes. In making out the collector's roll for the year, the clerk of the municipality must add the arrears of taxes to the taxes assessed for the current year. The treasurer of every township and village must within fourteen days after the time appointed for the return of the final statement of the collector's roll, and before the 8th of April in every year, furnish the county treasurer with a statement of all unpaid taxes and school rates directed in the collector's roll, or by the school trustees, to be collected. If it is found by this statement that arrears of taxes upon the occupied lands of non-residents remain in arrear, then this land is liable to be sold for the arrears, and must be included in the next or ensuing list of lands to be sold by the county treasurer. Penalties are imposed upon failure by any official in performance of the duties imposed with regard to these matters. If, on the 1st of May in each year, it appears that there are any arrears due on any parcel of land, the treasurer adds to the whole amount then due ten per cent. Unpatented land vested in or held by the Crown, which is either granted or located as a free grant, is liable to taxation from the date of the sale or grant. Where a portion of the tax of any land has been due for and in the third year, or for more than three years preceding the current year, then the treasurer of the county submits to the warden of the county a list in duplicate of all the lands liable to be sold for taxes, with the amount of arrears against each lot. The warden places the seal of the corporation on the list. One copy is deposited with the clerk of the county, the other is returned to the treasurer, with a warrant directing the sale of the land for taxes. The treasurer thereupon advertises the list of lands for four

Sales of  
land for  
taxes.

weeks in the Ontario Gazette, and once a week for thirteen weeks in some newspaper published in the county; the day of sale must be more than ninety-one days after the first publication of the list. If at the time appointed for the sale no purchasers appear, the treasurer may adjourn the sale. If the taxes have not previously been collected, or if no person appears to pay them at the sale, the treasurer then sells by public auction so much of the land as is sufficient to discharge the taxes and expenses. All he need sell is so much of the lot as may be necessary to secure the payment of the taxes due. If at that sale the full amount of arrears of taxes due is not realized, then at an adjourned sale, not earlier than one week nor later than three months afterwards, which must be advertised, the lands must be sold for any sum the treasurer can realize, and that sum must be accepted in full payment of the arrears. The council of the municipality may buy the land at the price realized at the adjourned sale. After the sale the treasurer must give a certificate to the purchaser stating distinctly what part of the land and what interest in it have been sold; the quantity of land, the sum for which it has been sold, and the expenses of the sale, and stating that a deed conveying the land to the purchaser or his assigns will be executed by the treasurer and warden at any time after the expiration of one year from the date of the sale, if the land is not previously redeemed. Thereupon the purchaser becomes the owner so far as to have all necessary rights of action and powers for preventing spoliation or waste until the expiration of the term during which the land may be redeemed. He must not knowingly allow any timber to be cut, nor can he otherwise injure the land, but he may use the land without deteriorating its value. From the time of the tender to the treasurer of the full amount of redemption money required, the purchaser ceases to have any further right in or to the land in question. The owner of any land sold may at any time within one year from the day of sale, exclusive of that day, redeem the land by paying or tendering to the county treasurer the sum paid by the purchaser, together

Tax certificate.

Redemption.

with ten per cent. interest. The treasurer must then give the person a receipt stating the amount paid and the object of payment, and the receipt is evidence of the redemption. If the land is not redeemed within the year, then on payment of one dollar the treasurer and warden must deliver to the purchaser a deed in duplicate of the land sold, the deed must be registered within eighteen months of the sale, otherwise persons claiming under the sale are not deemed to have preserved their priority as against a purchaser in good faith who has registered his deed prior to the registration of the deed from the warden and treasurer. Whenever lands are sold for arrears of taxes, and the treasurer has given a deed for the same, that deed is valid and binding, except as against the Crown, if it has not been questioned before some Court of competent jurisdiction or some person interested in the land sold within two years from the time of sale. In all cases where lands are sold for arrears of taxes, then so far as regards rights of entry adverse to any bona fide claim or right, whether valid or invalid, derived mediately or immediately under the sale, then section 9 of the Act respecting the Law of Transfer of Property does not apply.\* In such cases the right or title of persons claiming adversely to any such sale shall not be conveyed where any person is in occupation adversely to such right or title. The common law and sections 2, 4 and 6 of the statute passed in the 32nd year of the reign of King Henry VIII. c. 9, are revived. This statute forbids persons transferring pretended titles to land unless the vendor has received the profits for one whole year before the grant, or has been in actual possession of the land or of the reversion or remainder. The penalty for contravention is that both purchaser and vendor forfeit each the value of the land.

Tax deed.

Attempted trespass of rights of entry.

R. S. O. c. 100.

32 Hen. VIII. c. 9.

Actions for recovery of land for taxes.

Where lands having been legally liable to be assessed for taxes are sold as for arrears of taxes, and the

\* By this section, rights of persons out of possession of land may be transferred by deed. As stated in the text, a tax sale makes such a transfer void. It becomes a legal offence to attempt to make it.

sale or the conveyance is invalid by reason of uncertain and insufficient description, and the right or title of the tax purchaser is not valid, and where the tax purchaser has entered on the lands and improved them, then in an action for recovery of lands brought against the tax purchaser, if he is ejected by reason of the invalidity of the sale or conveyance, the Judge before whom the action is tried must direct the jury to assess, or must himself, if the case is tried without a jury, assess damages for the defendant for the amount of the purchase money at the sale, and interest and all taxes paid since the sale, and any loss to be sustained in consequence of any improvements made before the commencement of the action by the defendant, less all just allowances for the net value of any timber sold off the lands, and all other just allowances to the plaintiff, and must assess the value of the land to be recovered. If verdict is for the plaintiff, no writ of possession can issue until the plaintiff has paid into Court for the defendant the amount of these damages. If the defendant desires to retain the land he may retain it on paying into Court on or before the fourth day of the next sitting, or any date to be fixed by the Court, the value of the land as assessed at the trial. After this payment no writ of possession can issue, but the plaintiff, on delivering into Court for the defendant a sufficient release and conveyance, becomes entitled to the money paid in. If the taxes for non-payment of which the lands have been sold have been fully paid before the sale, or if within the time allowed for redemption a sufficient tender has been made, or if on the ground of fraud by the purchaser a Court would grant equitable relief; in these cases the purchaser has no right such as that just described. If more than one person is interested in the land for some partial estate therein, then the money is retained in Court until a sufficient release is got from all parties. If the defendant does not pay into Court the value of the land assessed at the trial, then any other person interested in the land under the sale or conveyance for taxes may pay the amount into Court before



the end of the sitting, or before the expiry of ninety days from any day to be named by the Court ; till the expiration of that time no writ of possession can issue. If the value of the lands is not paid into Court, then the amount of the damages paid in must be paid out to the different persons who, if the sale for taxes were valid, would be entitled to the lands as the Court may direct. Costs may be allowed to the defendant if he, at the time of entering his appearance to the plaintiff's writ of summons, gave notice to the plaintiff of the amount claimed, and that on payment of the amount the land would be surrendered, or that he desired to retain the land and was ready and willing to pay into Court a sum mentioned in the notice as the value of the land, and that the defendant did not intend at the trial to contest the title of the plaintiff; if it satisfactorily appears that the defendant does not contest the action for any other purpose than to retain the land on paying its value or to obtain damages, then the Judge must certify that fact upon the record; thereupon the defendant is entitled to his costs of defence.

Deficiencies to be made good by council.

Non-resident land fund.

Every local municipal council, in paying over any school or local rate, or its share of any county rate, or any other tax, must supply out of the funds of the municipality any deficiency arising from the non-payment of the tax. In cities and towns arrears of taxes are collected and managed in the same way as in the case of other municipalities. Triplicate blank receipt books must be kept for the purpose of audit. All taxes from non-resident lands may be set apart as non-resident land fund, and so much of this fund as is derived from each municipality forms part of the general funds of that municipality. Debentures may be issued by county councils upon the credit of this fund. As has been stated, all officials are liable for delinquency or default in discharge of any duties connected with either assessing or collecting, and stringent penalties are enacted to keep them in the line of their duties. Further, treasurers and collectors must give bonds for the faithful performance of their duties. The system of assessment and col-

lection has thus been explained. It is one of the most important duties committed to municipal councils, and is a matter in which the people of the province have a most vital interest and which they keenly watch.

One of the principal duties of a parent, it will be seen later on, is that of education. With the advance of modern society it has become recognized that the state should not only oversee the education of children, but also compel it. Accordingly provision is made for a system of compulsory education throughout the province. The supervision of all matters relating to education is confided to the Minister of Education, and a Department of Education has been established, which consists of the Executive Council or a committee of the Council appointed by the Lieutenant-Governor. The department has power to make regulations for all matters concerning schools. Before the British North America Act was passed, a system of Roman Catholic separate schools had been established in Upper Canada; this system was continued, and special regulations are made with regard to these separate schools. With regard to the general education of the country, the schools are either public or high schools; next to the high schools stands Upper Canada College, which is a residential high school for the province, and university degrees are granted by the University of Toronto, which is a provincial institution established for that purpose. Public schools are either rural, which are looked after by rural school trustees, or public schools in cities, towns, and incorporated villages, which are looked after by boards of trustees, called public school boards. All these schools are free, and every person between the ages of five and twenty-one years has the right to attend some school. Every township is divided into school sections, and no section can be formed which contains less than 50 children between the ages of 5 and 21 years, whose parents or guardians are residents, unless the section is more than four square miles in area. There are three trustees for each of these sections, who must be resident ratepayers over twenty-one years of age. These trustees elect a chairman and a secretary-

Education

Compulsory education.

Department of Education

R. C. separate schools.

Public schools.

School sections.

treasurer, who may be one of themselves, and it is their duty to take possession of and hold all public school property in the section. They hire the teachers; they must provide adequate accommodation, and generally take charge of all school matters; their accounts are audited each year. In unorganized townships the public school inspector may form school sections, which must not exceed in length or breadth five miles in a straight line, and when formed, three school trustees are appointed for each section. The school sections of townships without county organization may form township boards, and the township is then divided into wards, and all the public schools of these townships are managed by one board of trustees; this board consists of two from each ward, and is called the Public School Board of the township, they have the same duties as other rural school trustees. Township councils have power to unite sections, or to alter the boundaries of sections, or to dissolve unions, subject to an appeal to the county council. Unions of school sections may be formed between parts of two or more adjoining townships and an adjoining town or incorporated village. All questions relating to property or other matters of dispute are settled by arbitration.

In cities, towns and incorporated villages, the boards of public school trustees have the same general duties of supervision as are imposed upon rural school trustees; for every ward there are two school trustees, each of whom holds office for two years. In every incorporated village not divided into wards, there are six trustees; all of these trustees are elected by ballot. The persons who are qualified to vote at these elections are all persons who are ratepayers and who are public school supporters, and also persons qualified under the Municipal Act as farmers' sons. The expenses of schools are provided for as follows: The municipal council of every township levies by assessment upon the public school supporters of the whole township the sum of \$150 at least for every public school in the township in which a school has been kept open the whole of the year exclusive of vacations. When the school has been kept

Unorganized townships.

Township boards.

Union sections.

Public school boards.

School expenditure, how provided for.

open for six months or over, a proportionate amount of the sum of \$150 is levied and collected; an additional sum of \$100 is levied and collected for every assistant teacher engaged for the whole year, and a proportionate amount if that assistant is engaged for six months or over. Besides this amount, the municipal council of the township collects from the taxable property in each section such other sums as may be required by the trustees for school purposes. In cities, towns and villages the municipal council levies such sums as may be required by the public school trustees for school purposes. School sites are obtained by the appropriation of the necessary lands; all matters of dispute being settled by arbitration. Besides the special municipal taxation, the Legislative Assembly votes in each year a grant for the support of public and separate schools, which is apportioned annually to the different counties, townships, cities, towns and incorporated villages according to their population. This amount is payable on or before the 1st of July in every year to the municipal treasurer. The Government grant may be withheld should the requirements of the Education Department not be complied with, and if the default is due to the negligence of the trustees, they may be personally liable for the deficiency. No person chosen to serve as trustee can refuse to act. Teachers are required to hold certificates, which are of three grades. Examinations are held annually, and model schools and teachers' institutes are provided for the education of teachers. Inspectors are appointed by county councils. One inspector cannot have supervision over more than one hundred and twenty schools, or less than fifty; but it is not necessary to appoint more than one inspector in each riding of the county. Where there are more than fifty public schools, the county council may appoint two or more inspectors; the principal power held by inspectors is to withhold the order for the Government grant when the regulations of the Public Schools Act or Education Department are not complied with. In cities and towns inspectors are also appointed. When the teachers engaged by the trustees of a city exceed

Legisla.  
tive grant.

Teachers.

Inspectors.

Superannuation fund.

Attendance of children.

54 Vict. c. 56.

High schools.

High school board.

three hundred, the board must appoint two inspectors, and an additional inspector for every three hundred teachers on the staff above six hundred. Teachers are entitled to share in a superannuation fund, to which they may contribute. The only books which can be used in the schools are those authorized by the Education Department, and teachers using unauthorized books are liable to a fine. No teacher, trustee, inspector, or official of the Education Department can act as agent for the sale of books. All children between eight and fourteen years of age must attend school, unless the child is under efficient instruction at home, or unable to attend by reason of sickness or other unavoidable cause. If there is no school within two miles, if the child is under ten, or within three miles if over ten, or if there is no accommodation in the school which the child has the right to attend, then the attendance is also excused. No child under fourteen can be employed by any person during school hours while the public school of the section or municipality is in session, and any person employing the child is liable to a penalty of twenty dollars. The police commissioners may appoint truant officers to see that the children are kept at school. The assessors of every municipality must make an annual list of the name, age and residence of every child between eight and fourteen years of age, and return this list to the clerk of the municipality with the assessment roll.

The next schools above the public schools are the high schools. These schools are established by a county council in any municipality containing not fewer than one thousand inhabitants. If a high school district is to be composed of more municipalities than one, then the county council may pass a by-law for the establishment of a high school in any incorporated village containing less than one thousand inhabitants within the proposed district if the adjoining municipalities have united with the village so as to constitute a district containing at least three thousand inhabitants. Each high school district is presided over by a high school board, consisting of at least six trustees. Where high schools are constituted in any municipality within the jurisdic-

tion of the county, three of the trustees are appointed by the county council, the others by the municipalities. The trustees have the same general powers of supervision and management as public school trustees; sites for high schools are obtained if necessary by appropriation, the value being settled by arbitration. The high schools are maintained by a Government grant and a municipal grant, the latter being equal to the Government grant. The municipal council levies and collects the sums for which the county is liable, and a further sum not exceeding \$500 in any one year if required by the trustees for permanent improvements. In the high schools fees must be paid not to exceed \$1 per month. There is a uniform entrance examination. No high school which is not conducted according to the High School Act and the regulations prescribed by the Education Department can receive any part of the high school fund. There is the same prohibition of the use of unauthorized books as in the case of public schools.

Separate schools may be either Protestant or coloured, or Roman Catholic. Upon the application in writing of five or more heads of families, the municipal council of any city, town or incorporated village must authorize the establishment of a separate school for Protestants, and upon the like application the council must establish one or more separate schools for coloured people, and in each case must prescribe the limits of the section. None but coloured people can vote at the election of trustees of any separate school established for coloured people, and none but the persons petitioning for the establishment or sending of children to a Protestant separate school can vote at the election of trustees for that school. There must be three trustees for each separate school, and no Protestant separate school can be allowed in any school section except when the teacher of the public school in that section is a Roman Catholic. Wherever separate schools exist, every Protestant or coloured person, as the case may be, sending his children to that school, or supporting the school by subscribing annually an amount equal to what he would pay if

Separate  
school  
boards.

Who are  
supporters  
of a sepa-  
rate school

the school did not exist, is exempt from payment of rates for the public schools. These separate schools cannot share in school money raised by local municipal assessments, for public school purposes, but they share in the Legislative public school grant according to the number of their pupils. Roman Catholic public schools are formed in the same way; there are rural schools for townships, and urban schools for cities, towns or incorporated villages. The general duties of trustees are the same as those of public schools. Separate school boards may be formed in cities, towns and incorporated villages. Every person paying rates, whether as proprietor or tenant, who gives notice to the clerk of the municipality that he is a Roman Catholic and supporter of a separate school, is exempt from payment of all rates imposed for the support of public schools while he continues a supporter of a separate school. No person is deemed a supporter of a separate school unless he resides within three miles of the site of the school house. A person who is a non-resident of a municipality may require his school tax to be appropriated to a separate school. The assessor must distinguish in the assessment roll between Protestant and Roman Catholic supporters, and must accept the statement of any ratepayer that he is a Roman Catholic as sufficient evidence for placing that person on the roll as a separate school supporter. In every case where land is assessed against both the owner and occupant, or owner and tenant, then the occupant or tenant is to be taken as the person primarily liable for the payment of school rates, and for determining whether the rates are to be applied to public or separate school purposes; and no agreement between the owner or tenant as to the payment of taxes as between themselves can be allowed to alter this presumption. If, as between the owner and tenant or occupant, the owner is not to pay taxes; if by the default of the tenant or occupant the owner is compelled to pay his school rate, then the owner may direct it to be applied to other public or separate school purposes. A company may require any part of the real property of which it is either the owner and occupant, or tenant, and any part of its personal



property liable to assessment, to be applied to separate schools. The trustees may require the council to collect through their collectors or other municipal officer the separate school rates, or may agree with the council for the payment of a fixed proportion of the total rate as their share.

Separate schools are entitled to a share of the annual grant made by the Legislature dependent on the number of pupils attending the school, but not to any school moneys arising from local assessments for public school purposes. The trustees have the same liability for default or neglect as those of public schools. There is no rule as to the use of text-books, as in the case of public schools.

Share in  
legislative  
grant.

The constitution and organization of Upper Canada College and the University of Toronto are somewhat foreign to my purpose, and I do not propose to enter into the details of their organization. They form the completion of the system of public education of Ontario. Its essential features are that it is compulsory but free, and it is kept entirely within the control of the people themselves, who tax themselves for its support, and who elect from themselves persons responsible for its maintenance. This brief view of the system will furnish sufficient indication of its salient features.

Upper  
Canada  
College.

*Statutes Relating to Matters Referred to in Above Section—(Statutes of Ontario.)*

PAGE

271..Municipal Institutions Act—1892 c. 42; 1893 c. 35; 1894 cc. 50, 56; 1895 c. 42; 1896, c. 51.

\*..Municipal Light and Heat Act—R. S. O. c. 191; 1895 c. 46.

\*..Municipal Water Works—R. S. O. c. 192; 1890 c. 53; 1893 c. 37.

280..Assessment Act—1892 c. 48; 1893 c. 38; 1894 c. 57; 1895 c. 47; 1896 c. 58.

286..Drainage Act—1894 c. 56; 1895 c. 55; 1896 c. 66.

\*..Municipal Arbitrations—1895 c. 43.

\*..Convictions under Municipal By-laws—1895 c. 44.

273..Reduction of number of County Councillors—1896 c. 52.

283..Provincial Municipal Auditors—1896 c. 54.

307..Education Department—1896 c. 69.

307..Public Schools—1896 c. 70.

310..High Schools—1896 c. 71.

311..Separate Schools—R. S. J. c. 227; 1890 c. 71; 1894 c. 59; 1896 c. 72.

310..Compulsory Attendance—1891 c. 56.

\* These Statutes are not dealt with in the text.

## CHAPTER I.

SECTION 2—*Continued.*

## RELATIVE RIGHTS OF PERSONS (PUBLIC).

MUNICIPAL MATTERS GENERALLY.	Butter and Cheese Manufac- ture.
PUBLIC MORALS.	PROTECTION OF PERSONS— See next section.
ONTARIO LIQUOR LICENSE ACT.	PROTECTION OF PROPERTY.
Board of License Commis- sioners.	Preservation of Forests from Destruction by Fire.
Accommodation Required for Taverns and Inns.	The Protection of Sheep.
Wholesale Licenses.	Investigation of Accidents by Fire.
License Fund.	PROTECTION OF GAME.
Clauses Prohibitory of Sale of Liquor.	DESTROYING OF WOLVES.
CANADA TEMPERANCE ACT.	MISCELLANEOUS MUNICIPAL MAT- TERS.
Procedure to Bring Act into Effect.	Exemption of Firemen from Certain Duties.
Declaration that Act in Force.	Public Libraries.
Revocation of Act.	Public Parks.
Exceptions to Operation of Act.	Gas and Electric Lighting and Heating.
SUNDAY OBSERVANCE.	Water-works.
PROTECTION OF CHILDREN.	HIGHWAYS.
PUBLIC HEALTH.	Rules for Travelling on High- ways.
Provincial Board of Health.	Exemptions from Tolls.
Medical Health Officer.	Snow Roads for Winter.
Local Board of Health.	Snow Fences.
Health Officers.	Traction Engines.
Notice of Infectious Diseases.	BRIDGES.
County Medical Health Offi- cers.	FERRIES.
Inspection of Staple Articles.	

Having explained the formation of municipalities in the province and their mode of self-government, and their powers and procedure with regard to taxation and education, I now pass to the examination of other municipal questions, which are also dealt with by municipal councils. It has been considered by the Local Legislature that the interests of the community are best preserved by confiding these matters to the respective municipalities, thus leaving the Legislature itself free to deal

with other matters affecting the province as a whole, and not interfering except to check abuses or provide machinery for carrying out the measures delegated to the municipalities. These matters may be sub-divided as follows:

1. Public Morals.
2. Public Health.
3. Protection of the Person.
4. Protection of Property.
5. Protection of Game.
6. General miscellaneous matters.
7. Highways, Bridges, Ferries.

1. Public Morals. The most striking interference of the state with regard to public morals is in the case of the legislation with reference to the traffic in spirituous liquors. The Legislatures of the Dominion and of the province have both dealt with the matter. There has been much discussion as to which of the two Legislatures has power to make laws governing the liquor traffic. By referring to the table of cases on the British North America Act, printed on page 22 above, it will be seen that the right of the Dominion to legislate for the prohibition of the sale of liquor to the extent provided for by the Canada Temperance Act has been sustained. The right of the province to regulate the liquor traffic by imposing licenses, etc., has also been sustained. A case before the Judicial Committee of the Imperial Privy Council, brought to test the question where the power over the liquor traffic really lies, has been decided while these pages have been going through the press. The questions submitted to the Privy Council are stated below, with the answers given by the Judicial Committee added to each.\* It may be said that the legis-

\* 1. "Has a Provincial Legislature jurisdiction to prohibit the sale within a province of spirituous, fermented or other intoxicating liquors? Ans.—No—only as in answer to 7.

2. Or has the Legislature such jurisdiction regarding such portions of the Province as to which the Canada Temperance Act is not in operation? Ans.—No—only as in answer to 7.

lation of the Dominion has, so far, been passed in the direction of total prohibition of the liquor traffic. That of the province is in the direction of regulating that traffic. The provisions of the provincial law may be stated as follows:

R. S. O.  
c. 194.

License  
commis-  
sioners.

Liquor can only be sold in licensed houses. A license to sell liquors by retail cannot be granted except upon petition by the applicant to the license commis-

3. Has a Provincial Legislature jurisdiction to prohibit the manufacture of such liquors within the Province? Ans.—Yes.

4. Has the Provincial Legislature jurisdiction to prohibit the importation of such liquors into the Province? Ans.—No.

5. If a Provincial Legislature has not jurisdiction to prohibit sale of such liquors, irrespective of quantity, has such Legislature jurisdiction to prohibit the sale by retail, according to the definition of a sale by retail, either in statutes in force in the Province as at the time of Confederation, or any other definition thereof? Ans.—No—only as involved in above.

6. If a Provincial Legislature has a limited jurisdiction only as regards the prohibition of sales, has the Legislature jurisdiction to prohibit sale subject to the limits provided by the several sub-sections of the 99th section of "The Canada Temperance Act," or any of them? Ans.—No—only as in above.

7. Has the Ontario Legislature jurisdiction to enact the 18th section of the Act passed by the Legislature of Ontario in the 53rd year of Her Majesty's reign, intituled "An Act to Improve the Liquor License Act," as said section is explained by the said Legislature, in the 54th year of Her Majesty's reign, and intituled "An Act respecting Local Option in the Matter of Liquor Selling"? Ans.—Yes—but only operative until adoption of Canada Temperance Act.

Section 18 of the "Act to Improve the Liquor License Act"—referred to in question 7—enacted as follows:

"The council of every township, city, town and incorporated village may pass by-laws for prohibiting the sale by retail of spirituous, fermented or other manufactured liquors in any tavern, inn or other house or place of public entertainment, and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment, etc."

This decision really means that the Ontario Legislature has no power to prohibit the sale of liquors, either by wholesale or retail, but that there is power to so prohibit by local option; and that the Legislature has not the power to prohibit the importation, but that it may prohibit the manufacture of spirituous, fermented or other intoxicating liquors.

The power to manufacture is allowed to the Province, but it has no power to prohibit the sale except locally. If the sale of liquor is legal, the former will be difficult, if not impossible, to restrain. The result will probably be that total prohibition of the use of liquor in Ontario will no more be heard of. The admitted evils of the immoderate use of liquor must be grappled with in a more sensible way. Medical science must deal with the question as partially one of disease, and in cases where ordinary medical remedies fail, incarceration must be adjudged for such sufficient period as medical men advise to allow of compulsory treatment. I am convinced that in this direction is the true line of reform.

sioner of the district in which the license is to have effect. A board of license commissioners composed of three persons is appointed by the Lieutenant-Governor for each city, county, union of counties, electoral district or licensed district, as the Lieutenant-Governor may think fit. These license commissioners determine the conditions and qualifications upon which a license may be granted; they may limit the number of licenses; they may exempt from having all tavern accommodation required by law a few persons according to the population of the place. They have the power of regulating licensed taverns and shops, for licenses may be: Tavern, shop, or vessel licenses. A fee is charged by Government, upon payment of which the license may be obtained. No license can be granted on a ferry boat. Every tavern or inn authorized to be licensed must contain, in addition to what may be needed for the use of the family of the keeper, not less than four bedrooms, and in cities, six bedrooms; there must also be attached proper stabling for at least six horses. The tavern or inn must form no part of and shall not communicate by any entrance with any shop or store in which groceries or provisions are kept for sale. Security must be given by the tavern-keeper by bond of \$200 to observe all by-laws. Wholesale licenses may be issued to persons who carry on the business of selling by wholesale or in unbroken packages. Manufacturers of native wines from grapes grown in Ontario, and who sell these wines in quantities of not less than one gallon or two bottles of not less than three half-pints each, are exempt from duty and need not obtain any license. Licenses may be transferred by permission of the inspectors. Every liquor license is held to be a license only to the person named in it, and for the premises described in it; it remains valid only so long as the person continues to be the occupant of the premises, and the true owner of the business there carried on. The license fund is distributed, one-third to the treasurer of the province, the other two-thirds to the treasurer of the municipality. The penalties for infringement of the liquor license by-laws are exceedingly stringent. Very slight evidence

Tavern  
license.Wholesale  
license.License  
fund.

Accidents  
to drunken  
persons.

is sufficient to put the person who is prosecuted to the proof that he is innocent. If any person has drunk to excess in any inn or tavern, and while drunk has come to his death by suicide or drowning, or other accident, the innkeeper or tavern-keeper is liable to an action for damages for the death. This action must be brought within three months after the decease by the legal personal representatives of the deceased; in this action they may recover not less than \$100 nor more than \$1,000, as may be assessed as damages.

The legislation of the Dominion on the subject of the liquor traffic may be summarized as follows :

Canada  
Temper-  
ance Act.

R. S. C.  
c. 106.

The object of the Dominion statute known as the Canada Temperance Act is the total prohibition of the sale of liquor in any county or city. After the Act is brought into force, as presently explained, no person can within any county or city, by himself, his clerk, servant or agent, expose or keep for sale, or directly or indirectly on any pretence or upon any device, sell or barter, or in consideration of the purchase of any other property, give to any other person any intoxicating liquor. An exception is made in certain instances, presently referred to. The mode of bringing the Act into effect is by petition; the petition must be signed by one-fourth or more of all the electors in the county or city named in it. Notice is given by the petitioners that they propose to present to the Governor-General a petition declaring the Act to be in force. The signatures must be verified by affidavit; it must have been deposited for public examination by any person, for ten days before it is read before the Secretary of State, in the registry office for the county or city; two weeks' previous notice of the deposit must also have been given in two newspapers published in the county or city, and by at least two insertions in each paper. If it appears that these requisites have been complied with, the Governor-General may issue his proclamation setting out the notice, the number of signatures, and a day on which a vote will be taken for or against the petition. The question as to whether

the Act shall be brought into force or not is then voted upon; all persons who are qualified to vote at the election of a member of the House of Commons are qualified to vote for or against the adoption of the petition. The sheriff or registrar of deeds is appointed returning officer; he must ascertain from the lists of voters the number of persons qualified to vote; he then divides the division into polling districts, one for every two hundred voters; he gives public notice of this division at least eight days before the polling day; he appoints deputy returning officers, and his duties and their duties are the same as those at an election for a member of the House of Commons. The voting is by ballot, and a return of the result is sent in to the Secretary of State. Within a week after the returning officer has summed up the votes and declared the result, a scrutiny may be had before the Judge of the County Court. Provisions are made to secure secrecy of voting, preservation of the peace and good order, and for the prevention of corrupt practices or other illegal acts, in the same way as at elections for the House of Commons. When one-half or more of all the votes polled have been against the adoption of any petition, no similar petition can be voted upon within three years from the day on which the vote was taken. When a petition has been adopted the Governor in Council, at any time after the expiration of sixty days from the voting, may declare the Act to be in force; it will then take effect from and after the day on which the licenses for the sale of spirituous liquors then in force will expire; provided that day is not less than ninety days from the day of the Governor-General's order; if less, then on the like day in the then following year; if there are no licenses in force, it then takes effect thirty days from the publication of the order in the Canada Gazette. No order in council under the Act can be revoked until after the expiration of three years from the date of its coming into force. No petition for revocation can be submitted to the vote of the electors more than thirty days before the expiration of three years from the coming into force of the Act. A vote for revocation is taken in the same

Voting  
upon oper-  
ation of  
Act.



Excep-  
tions from  
Act.

way as a vote to adopt the Act. As has been stated, after the Act comes into force there are certain exceptions to its operation. These are: (1) Acts done under licenses issued to distillers or brewers, or under licenses for retailing spirits on board vessels, or under licenses of any other description whatever. (2) Sales of wine for sacramental purposes. (3) Sales of intoxicating liquors for exclusively medicinal purposes, or for bona fide use in some art, trade or manufacture; in this case there must be a certificate of a medical man, or when for use in art, trade or manufacture, of two justices of the peace; a register must be kept of all sales. (4) Any producer of cider at his premises, and any licensed distiller or brewer, at his distillery or brewery, may manufacture and sell in wholesale quantities. In the case of spirits, not less than ten gallons; in the case of ale or beer, not less than eight gallons at any time, and only to druggists and licensed vendors, or to persons who will forthwith carry the liquor beyond the limits of the county or city. The liquor must be wholly removed or taken away in quantities not less than those mentioned. (5) Vine growing companies may sell the liquor that they manufacture, and no other, in not less than ten gallons at any one time, and only to druggists or licensed vendors, or to persons taking the liquor away from the county or city in the quantities mentioned. (6) Manufacturers of pure native wines from grapes grown and produced in Canada, when authorized by license of the municipal council, in quantities not less than ten gallons at one time, except wine sold for sacramental purposes, when any number of gallons may be sold. (7) Wholesale merchants or traders duly licensed to sell liquor by wholesale may sell in quantities not less than ten gallons at any one time, and only to the same persons as those already mentioned. Prosecutions for breach of the Act may be brought before any police or stipendiary magistrate, or any magistrate having the power or authority of two or more justices of the peace. Provisions are made for the destruction of liquor similar to those of the Provincial Act. On the trial of any proceeding the person

opposing or defending, or the wife or husband of the person opposing or defending, is competent and compellable to give evidence. No conviction can be removed by certiorari. Penalties are imposed for compounding evidence and tampering with witnesses.

Other matters relating to public morals have been dealt with by the province. They are: The Observance of the Lord's Day, the frequenting of billiard rooms and the use of tobacco by minors. It is provided with respect to Sunday that no person can lawfully sell or buy any goods or land on that day, and all sales made on that day are null and void. All work in a person's ordinary calling is prohibited, except conveying travellers, carrying the mail, selling drugs and medicines, and other works of necessity or charity. No political meetings are allowed on that day. Tippling, brawling, and disorderly conduct on that day are also prohibited. Sunday excursions are unlawful, and the owner of any steamboat or railway, for such an excursion, is made liable to a fine of four hundred dollars. Indians are, as already stated, exempted from the Act. The statute is founded upon the Act known as The Lord's Day Act, passed in the reign of Charles II. This latter Act is fully comprised in the Ontario Act. The Ontario Act is somewhat wider in its terms than the English Act. Neither statute makes all work or business done on Sunday illegal; but only carrying on trade and ordinary callings on that day. Farmers are now brought within the operation of the Act.

Lord's  
Day Act.

R. S. O.  
c. 203.

29 Car. II.  
c. 7.

2. The next subject, in the order above stated,\* is Public Health.

Public  
Health.

For Ontario a Provincial Board of Health is constituted, consisting of not more than seven members, appointed by the Lieutenant-Governor in Council for three years; at least four members of the board must be duly registered medical practitioners. This board takes cognizance of the interests of life and health among the people of the province; they are instructed to study

Provincial  
Board of  
Health.

R. S. C.  
c. 205.

\* See page 315, *ante*.

especially its vital statistics and to make an intelligent and profitable use of the collected records of death and sickness among the people; they must make sanitary investigation and inquiries respecting causes of disease, and especially of epidemics; the causes of mortality and the effects of localities, employments, conditions, habits and other circumstances upon the health of the people; they must make suggestions as to the prevention and introduction of contagious and infectious diseases; their duty is further to inquire into the measures taken by local boards of health, and if it appears that no efficient measures are being taken by these local boards, then the provincial board may call upon the local board to exercise and enforce their powers; if the local board do not do so, then the provincial board may, at the expense of the municipality, exercise any of the powers of the local board they may consider necessary. When required, or when they deem it necessary, the provincial board must advise the Government and local boards of health in regard to the public health, and as to the means to be adopted to secure proper location, drainage, water supply, heating and ventilation of any public institution or building. One of their chief duties is to see that the supply of proper vaccine matter is obtainable at all times for the use of the province. Whenever the province is threatened with any epidemic, endemic or contagious disease, the Provincial Board of Health must issue the necessary regulations for cleansing of premises, the removal of nuisances, interment of the dead, supplying medical aid, house to house visitation, and regulating the departure of persons and conveyances. The board may determine how far its regulations shall affect any particular district. Land may be acquired by the board for purposes within its powers. In case of actual or apprehended emergency, possession may be taken, without a prior agreement with the owner of the land or building and without his consent, and may be retained as long as may be necessary by the board. Written notice must be given within five days after the taking or obtaining possession to the clerk of the local municipality; this notice must be given

whether possession is taken or obtained with or without the consent of the owner. Within five days afterwards the board must give notice to the owner, who is entitled to compensation from the local municipality for the use and occupation of the land or building. In case of disagreement, the Judge of the County Court summarily determines the amount to be paid. Where any resistance or forcible opposition is made to taking any land or building, the Judge of the County Court may issue a warrant for possession. No land or building can be used for health purposes which is within one hundred and fifty yards of an inhabited dwelling. Investigations can be made by the provincial board into any complaints of remediable unsanitary condition or nuisance. Whenever the establishment of a public water supply or system of sewerage is taken up by a municipal council, the system must be submitted to the provincial board for their approval, and cannot be constructed until the report of the board is transmitted, approving of the proposed plans. A medical health officer may be appointed by the provincial board for any municipality in which any formidable contagious disease appears. The appointment must be made by the council of the municipality within five days after notice from the provincial board; if not made, the Lieutenant-Governor may appoint a medical health officer. During his tenure of office he has all the powers and authorities of any health inspector or sanitary inspector, and the fact that similar duties are by statute imposed on the local board of health does not relieve the medical health officer from performing the same duties. Municipal and school elections may be postponed on account of the prevalence of any epidemic or contagious disease for any period not exceeding three months. When an election is postponed for any such reason, then the existing councils are continued in office until their successors are elected. In each township and incorporated village there is a local board of health, composed of the reeve, clerk, and three ratepayers appointed annually by the municipal council. In each town containing less than four thousand inhabitants the board of health consists of the

Medical  
Health  
Officer.

Local  
Board of  
Health.

Health  
officers.

mayor, clerk, and three ratepayers appointed annually by the council. For each city and town containing more than four thousand inhabitants, the local board of health consists of the mayor and eight ratepayers, appointed annually by the municipal council. Two or more counties may unite in their respective municipalities in each health district; the members of the district board then consist of three members of each municipality in the district, namely, the head of the council, a municipal clerk, and one other ratepayer, not a member of the council, appointed by it. The municipal councils may vote such sums as are deemed necessary by the local or district board for the carrying on of its work. The members of the boards are called health officers; any two or more of them, acting in the execution of any regulations of the Provincial Board of Health, may exercise the powers of the board; their duties are to look after all slaughter-houses, ice supplies, offensive trades, and abatement of nuisances generally. The local board may apply to the provincial board to investigate and report upon any nuisance involving difficult considerations. Local boards may authorize any two medical practitioners to enter any premises in the day time, for the purpose of making inquiries as to the state of health of any person on the premises; and, on the report of the medical practitioners in writing recommending that course, the board may cause any person found infected with contagious or infectious disease to be removed to some hospital. The report must state that the person can be removed without danger to life. The inhabitants of any dwelling-house in any city, town, village or township, may be ordered to remove from any dwelling-house or out-house used as a dwelling-house, should the health officers think such a course necessary; in case of refusal, the health officers may call in the assistance of constables and peace officers. When a certificate of a medical health officer or any other legally qualified medical practitioner is furnished that premises require to be cleansed and disinfected, the local board of health must give notice in writing to the owner of the premises, requiring him to

cleanse and disinfect them; should the owner fail to comply with the notice he is liable to a fine for every day's default, and the work may be done by the local board at the expense of the owner. Householders having in their family or household smallpox, diphtheria, scarlet fever, cholera or typhoid fever, must, within twenty-four hours, give notice to the local board of health. No person suffering from the disease can be removed from the house without the consent of the board or medical health officer, or attending physician. Physicians called upon to visit patients infected with smallpox, scarlet fever, diphtheria, typhoid fever or cholera, must report within twenty-four hours to the local board of health. Sick persons affected with any of these diseases must not mingle with the general public until sanitary precautions, prescribed by the local board, are complied with. Provisions are made for isolation by the local board, and for the destruction of any bedding, clothing or other articles which have been exposed to infection. When any contagious disease exists in any house or household, belonging to which are persons attending school, the householder must, within eighteen hours after the time the disease is known, notify the head teacher of the school, and also the secretary of the local board, of the existence of the disease. No member of the household can attend the school until a certificate has been obtained from the physician in charge that infection no longer exists in the house. Smallpox hospitals may be erected by municipalities; these hospitals may be either permanent or temporary. If an order of any local board of health or health officer involves an expenditure of more than \$100, there is an appeal to the County Judge against the order. A county council may appoint one or more of the county or district medical health officers. All the powers possessed by every medical health officer within the county are then transferred to and vested in the county health officer, and all sanitary inspectors are subject to his direction and control.

Infectious diseases.

Appeals to County Judge.

The inspection of staple articles has been provided for by Dominion legislation. It is a matter affecting

Inspection Acts.

public health in a great degree. Provision is made to prevent adulteration of food products and agricultural fertilizers. Inspectors of articles such as flour and meal, wheat, beef and pork, ashes, fish, butter, leather and hides, may be appointed by the council, and these inspectors have powers of grading and otherwise securing proper value to purchasers. A Gas Inspection Act has also been passed by the Dominion; a Petroleum Inspection Act has also been passed.

Cheese and  
butter  
manufac-  
ture.

Fraud in the manufacture of cheese and butter has been the subject of legislation by both Dominion and Province, the former in their Criminal Code and the latter by special Act. A person sending to a cheese manufactory any milk diluted with water or skimmed milk, or keeping back "strippings," or knowingly selling tainted or sour milk to such a manufactory, is liable to a fine of not less than one dollar nor more than fifty dollars. Any butter or cheese manufacturer who fraudulently uses for his own benefit any of the cream supplied is liable to the same fine.

Protection  
of the  
person.

3. The next subject, under general miscellaneous matters, is the Protection of the Person. This subject will be dealt with afterwards when we come to speak of the subject of Master and Servant, except on one point.

R. S. O.  
c. 209.

No person can retain or receive for hire or award, for the purpose of nursing or maintaining infants apart from their parents, for a longer period than twenty-four hours, except in registered houses, more than one infant or twins under the age of one year. The municipal council must register all persons who keep nursing houses, and should a death occur in any such house notice of the death must be transmitted within twenty-four hours to the coroner, who must hold an inquest, unless a certificate is produced by a registrar or medical practitioner specifying the cause of death.

Protection  
of prop-  
erty.

4. The next heading, under general municipal matters, is the Protection of Property.

Fire dis-  
tricts.

The Lieutenant-Governor may, by proclamation, declare any part of the province to be a fire district, and when so declared the following regulations are made



as to fires within the district : No person can set out or start a fire in the woods between the first day of April and the first day of November, except for clearing land, cooking, obtaining warmth, or some industrial purpose. Every care and reasonable precaution to prevent the fire from spreading must be taken when a fire is set out for the purpose of clearing any land. Persons making fires in the forest, or close to it, or upon an island, for any of the above purposes must observe every reasonable care to prevent the fire from spreading, and carefully extinguish it. Locomotive engines on any railway passing through a fire district must be provided with the most approved and efficient means to prevent the escape of fire from the furnace or smoke stack. Penalties are imposed on all persons infringing these rules.

Any person may kill any dog which he sees pursuing, worrying or wounding any sheep or lamb. If a person has in his possession a dog which has within six months worried and injured or destroyed any sheep, the justice of the peace may issue his summons, directed to that person, to answer any complaint made with regard to the dog; if convicted, the dog must be destroyed. Any action for damages may be brought concurrently with this proceeding. The owner of any sheep or lamb killed or injured by any dog is entitled to recover the damage from the owner or keeper of the dog upon an action for damages, or by summary proceedings before a justice of the peace, and the aggrieved party is entitled to recover, whether the owner or keeper of the dog knew or did not know that it was vicious or accustomed to worry sheep. Damages, when done by dogs, the owners of which are either known or unknown, may be apportioned, so that all, when known, may bear their share of the penalty. When notice is given to the owner or keeper of any dog that it has injured or worried any sheep he must, within forty-eight hours, kill the dog ; if he neglects to do so he is liable to fine. The owner of any sheep or lamb killed or injured by any dog, the owner or keeper of which is not known, may

Protection  
of sheep.

R. S. O.  
c. 214.

apply within three months to the council of the municipality for compensation for the injury; if the council is satisfied that the owner of the dog cannot be found they must award to the aggrieved party a sum not exceeding two-thirds of the amount of the damage sustained by him. On payment over of this amount the municipality becomes entitled to the claim of the injured party should the owner be discovered. If sheep or lambs are killed or injured while running at large upon any highway or uninclosed land their owners have no claim under the Act to obtain compensation from any municipality.

R. S. O.  
c. 216.

Provision is made to prevent the spread of contagious diseases among horses and other domestic animals by destroying them.

Investigation of accidents by Fire.

R. S. O.  
c. 217.

Any coroner, as has been already stated, within whose jurisdiction a fire has occurred, must, under certain circumstances, institute an inquiry into the cause or origin of a fire. No municipality is liable for the expense unless the investigation is demanded by requisition, under the hands and seals of the mayor or other head officer of the municipality, and of at least two members of the council; the requisition cannot be given unless there are strong special and public reasons.

Protection of Game.

56 Vict.  
c. 49.

5. One of the matters undertaken by the Legislature is the protection of game. The game laws of Ontario have an object different to that of the laws on that subject in England.

The Lieutenant-Governor appoints fish and game commissioners for the province. He also appoints a game and fish warden, and also four other wardens. The board appoints also as many deputy wardens as are necessary.

Game is protected by providing a close season, through which it cannot be hunted, taken or killed. Trapping, batteries, swivel-guns, sunken punts are forbidden. Infringements of the regulations of the statute are punishable by fine and imprisonment, and in all cases confiscation of game. The above named officials must seize all game illegally taken and summon

offenders for breach of the law. In order to be able to kill deer a license is required.

Birds beneficial to agriculture are not allowed to be killed. Eagles, falcons, hawks, owls, wild pigeons, blackbirds, kingfishers, crows, jays, sparrows, ravens and other birds, such as snipe, grouse, quail, pheasants, etc., may be killed. Any person, during the fruit season, for the purpose of protecting his fruit, may kill robins and cherry birds. Except wild birds, such as those above named, no birds can be trapped or sold, nor can their nests be injured; offenders are liable to punishment by fine and imprisonment.

R. S. O.  
c. 222.

One of the relics of the original wild state of the province still remains on the statute book, in the shape of an Act encouraging the destroying of wolves. Any person producing the head of a wolf, or on proving to the satisfaction of the justice of the peace that the wolf was killed in a county or within one mile of an actual settlement in the county, is entitled to \$6 as a bounty. The justice of the peace must first cut off the wolf's ears, and then give a certificate to the person of the fact of the wolf having been killed; upon production of this certificate the treasurer of the county must pay the \$6. If the funds of a county do not enable the treasurer to pay the bounty, then the certificate is good towards satisfaction of the taxes which may be imposed on the person killing the wolf.

R. S. O.  
c. 223.

6. General miscellaneous matters. Having thus dealt with the special and more important branches of subjects under municipal control, I now come to some other miscellaneous matters for which special provision has been made as to general municipal matters. These must be dismissed by the mention of their names; they relate to the registration of debentures; the exemption of firemen from certain duties; public libraries; public parks; gas and electric and every means of lighting and heating; waterworks. I have not space to do more than refer to them.

Highways  
and  
Bridges.

7. The last matter under municipal control which I have to consider is that of the maintenance of highways and bridges,\* and then the law laid down as to the "rule of the road."

Law as to  
mainten-  
ance of  
Highways  
in Eng-  
land.

Every parish in England and municipality in Ontario is bound of common right to keep the high roads that go through it in good and sufficient repair, unless by reason of the tenure of lands, or otherwise, this care is consigned to some particular private person. From this burthen no man was exempt by our ancient laws, whatever other immunities he might enjoy: this being part of the *trinoda necessitas*, to which every man's estate was subject, viz., *expeditio contra hostem*, *arcium constructio*, et *pontium reparatio*. For, though the reparation of bridges only is expressed, yet that of roads also must be understood. And indeed, now, for the most part, the care of the roads only seems to belong to parishes; that of bridges being in great measure devolved upon the county at large by statute 22 Hen. VIII. s. 5. If the parish neglected these repairs, they might formerly, as they may still, be indicted for such their neglect: but it was not then incumbent on any particular officer to call the parish together, and set them upon this work; for which reason, by the statute 2 & 3 Ph. & M. c. 8, surveyors of the highways were ordered to be chosen in every parish.

These surveyors were originally, according to the statute of Philip and Mary, to be appointed by the constable and churchwardens of the parish; but now they are appointed by the inhabitants of every parish, and may have salaries allotted them for their trouble, and they are under the superintending power and control of the justices at special session. They were the original of our pathmasters in Ontario.

In On-  
tario.

The responsibility of municipalities in this province for highways is distributed as follows:

Each municipality has jurisdiction over the original allowances for roads within the municipality.

\* See also page 284, *ante*.

The county council has jurisdiction over all roads lying in townships, towns, or villages, in the county which the latter assumes, with the assent of the minor municipality. As soon as the county thus assumes a road, it must plank, gravel, or macadamize it. All township boundary lines not assumed by the county council must be opened up and maintained by the townships interested. If they do not open up or maintain the roads, the county can, on petition of the ratepayers interested, enforce their opening or repair. Roads, except in cities or towns, must not be more than one hundred or less than sixty-six feet in width. But the county council may give permission to have widths different to these.

Bridges are in like manner to be repaired by the municipality in which they are situate. County councils must repair all bridges between two townships, and all bridges over one hundred feet in length.

No council can close any public road, whereby any person will be excluded from ingress and egress to and from his land, without compensation, and also providing a new road for the use of that person.

If a person is in possession of an unopened road allowance, and there is another road in lieu of it, that person is deemed to be legally in possession of the original road allowance as against any other private person; but the council may open the old road by by-law. This duty is not compulsory on the council, it is only discretionary. An original road allowance may be sold to parties who have land next to it when a new public road has been opened in lieu of it. If a person opens a road and it is equally as convenient and suitable to the public as the original road allowance, then the council may convey that original allowance to the person opening the new road. Where mistakes have been made in surveys as far as possible the principle of *uti possidetis* is to be recognized.

Finally, the Municipal Act distinctly declares the liability of municipalities for care of roads, and exacts that on default, the corporation shall be civilly responsible for damages sustained by any person by reason of

55 Vict. c.  
42, s. 531.

the default in addition to any punishment provided by law. The corporation has a remedy over against any person who has caused the action by obstruction or otherwise.

Travelling  
on high-  
ways.

Travelling on highways and bridges. The rules for travelling on highways are as follows:

If a person travelling on a highway in charge of a vehicle meets another vehicle, he must turn out to the right from the centre of the road, giving the other vehicle one-half of the road. If a person travelling on a highway is overtaken by any vehicle or horseman, the person overtaken must turn out to the right and also allow the other to pass; the person overtaking must turn to the left, leaving the person passed on his right. If one vehicle is overtaken or met by another, and by reason of the extreme weight of the load on either of the vehicles the driver cannot turn out, he must stop, and, if necessary for the safety of the other vehicle, and if required to do so, he must assist the other person to pass without damage. Persons who are so drunk as to be unable to manage their vehicles on the highway are liable to a fine of not less than \$1 nor more than \$20. Racing, furious driving, shouting, blasphemous or indecent language upon highways are forbidden. When sleighs are used on a highway they must have at least two bells attached to the harness.

Wherever toll roads exist in the province there are certain exemptions from tolls; these are:

Exemptions from  
toll.

1. Volunteers in uniform.
2. Persons going to or returning from divine service on any Sunday or statutory holiday with their families and servants. Vehicles, horses or cattle belonging to the proprietor or occupier of any lands bordered by any turnpike road, when on such road for the sole purpose of going from one part of the lands to another part, provided they do not proceed more than half a mile along the road, going or returning, and are using the road for farming or domestic purposes; vehicles laden solely with manure for agricultural purposes, going and returning, even if empty.

One of the necessities of this province is to provide <sup>Sleigh bells.</sup> for roads in winter. Horses drawing sleighs are required to have two sleigh bells on the harness. The next provision that is made is that relating to double tracks in snow roads; the county council of each county may provide by by-law for the making of a double track during the season of sleighing upon the public roads in the county. When a by-law <sup>Snow roads.</sup> has been passed the double track must be made so that teams can pass without being obliged to turn out when meeting each other; the right hand track is that in which a team shall be required to travel. If any person is driving in the wrong track he must leave it when he meets another team rightfully using that track. The county council may also provide by by-law that roadmasters must cause these roads to be kept open. These roadmasters may apply the statute labor of the municipality towards keeping these roads. If a township council does not keep the roads open for travelling, then the county council may do so and may charge the rate for so doing upon the township. Any person refusing to do this work, who is liable to perform statute labor, may be fined not more than \$20 or less than \$1; and, in default, to imprisonment for a term not exceeding twenty-one days. The same penalties are imposed on persons driving in the wrong track refusing to turn out.

The next provision for winter time is snow fences. <sup>Snow fences.</sup> When fences are found to cause drifts so as to obstruct travel, they may be ordered to be removed and the new fences put up instead; if the requisition of the council is not complied with, then the council itself may remove the old fence and recover the costs and charges from the owner or occupier of the land by action in any Division Court in the locality; the amount of the judgment will be placed upon the next collector's roll as taxes against the lands, if not sooner paid. After the 15th of November in each year all municipal councils have power to enter on the lands of any corporation or person whomsoever, for the purpose of erecting and maintaining snow fences, subject to the payment of such damages, if any,



as may be actually suffered; in case of dispute the amount of payment is settled by arbitration.

Traction  
engines.

The use of traction engines on highways is allowed, under proper restrictions.

R. S. C.  
c. 93.

No bridge constructed by any company incorporated under the authority of the Parliament of Canada, and not a railway company, can be opened for public use without notice. The notice of the intention to open the bridge must be given to the railway committee; the railway committee must, therefore, give notice of the time when the bridge will be ready for inspection; after inspection and satisfactory report the bridge may be opened. All accidents must be reported by the company.

Municipal councils are given special powers, as above stated,\* over the bridges within their respective limits. The duty of maintenance is cast upon these councils, and, in that respect, bridges are like highways.

R. S. O.  
c. 195.

On bridges over thirty feet in length notices may be posted forbidding driving faster than a walk. Damages to the notice and disobedience to the injunction contained in it are punishable by fine, recoverable like other penalties.

\* See p. 284, ante. Ferries have been mentioned ante, pages 144, 161, 283.

*Statutes Relating to Matters Discussed in Above Section.*

*Public Morals.*

PAGE.

- 316..Ontario Liquor License Act—R. S. O. c. 194; 1888 c. 30; 1889 c. 41; 1890 c. 56; 1891 c. 46; 1892 c. 51; 1893 c. 40; 1894 c. 13.  
Sale of Liquor near Public Works—R. S. O. c. 35.  
Spirituous Liquors in Prisons—R. S. O. c. 243.  
318..Canada Temperance Act—R. S. C. c. 106; 1888 cc. 34, 35; 1890 c. 27; 1892 c. 26.  
321..Lord's Day Act—R. S. O. c. 203; 1896 c. 62.  
321..Minors in Billiard Rooms—R. S. O. c. 204.  
321..Use of Tobacco by Minors—1892 c. 52.

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89 c. 41;

890 c. 27;

*Public Health.*

PAGE.

- 321..Public Health Act—R. S. O. c. 205; 1889 c. 42; 1890 c. 61; 1891 c. 49;  
1893 c. 44; 1894 c. 53; 1895 c. 49.
- 325 { Canada General Inspection Act—R. S. C. c. 99; 1887 c. 36; 1889 c. 16;  
1891 c. 48; 1892 c. 23; 1893 c. 35; 1894 c. 36; 1895 c. 24.  
Oleo Substitutes for Butter—R. S. C. c. 100.
- Gas Inspection—R. S. C. c. 101; 1890 c. 25.
- Petroleum Inspection—R. S. C. c. 102, 1891 c. 49; 1893 c. 36; 1894 c. 40.
- Canned Goods—R. S. C. c. 105; 1887 c. 38.
- Adulteration—R. S. C. c. 107; 1896, c. 12.
- Cheese and Butter—R. S. O. c. 207; 1888 cc. 24, 32.
- 326 { Creameries—1888 c. 31 (Ont.)  
Milk—1888 c. 32; 1892 c. 53; 1893 c. 48; 1894 c. 54; 1895 cc. 41, 51; Dom.  
Act 1889 c. 43.  
Fruit—1895 c. 48.  
Dairy Products—1893 c. 37 (Dom. Act).

*Protection of Property.*

- 326..Fire Districts—R. S. O. c. 213.  
Bush Fires—1889 c. 46; 1890 cc. 63, 64.
- 327..Protection of Sheep—R. S. O. c. 214; 1890 c. 62; 1892 c. 55; 1893 c. 46.
- 327..Accidents by Fire—R. S. O. c. 217 (see page 232, ante.)
- 328..Protection of Game—1893 c. 49; 1894 c. 57; 1895 c. 56; 1896 c. 68.
- 329..Wolves—R. S. O. c. 223; 1892 c. 59.

*Miscellaneous Municipal Matters.*

- 329 { Exemption of Firemen—R. S. O. c. 188.  
Public Libraries—1895 c. 45; 1896 c. 57.  
Public Parks—R. S. O. c. 190; 1891 c. 44.  
Niagara Falls Park—1888 c. 7; 1894 c. 13.  
Algonquin National Park—1893 c. 8; 1894 c. 14; 1895 c. 8.  
Rondeau Park—1894 c. 15.

*Highways and Bridges.*

- 330..Powers of Municipalities—55 Vict. c. 42, sccs. 524 to 568 (see page 284).
- 332..Rules for Travelling on Highways—R. S. O. c. 195; 1890 c. 57; 1891 c. 47;  
1894 c. 52.
- 332..Exemptions from Tolls—R. S. O. c. 196.
- 333..Double Tracks in Snow Roads—R. S. O. c. 167.
- 333..Snow Fences—R. S. O. c. 198; 1890 c. 58.
- 334..Traction Engines on Highways—R. S. O. c. 200.
- 334..Dominion Act respecting Bridges, R. S. C. c. 93.

## CHAPTER I.

## SECTION 3.

## RELATIVE RIGHTS OF PERSONS (PRIVATE).

PERSONS ARE NATURAL OR ARTIFICIAL.  
NATURAL PERSONS.

1. Master and Servant.
  2. Husband and Wife.
  3. Parent and Child.
  4. Guardian and Ward.
  1. MASTER AND SERVANT.
    1. Several sorts of servants.
      - Menial servants.
      - Period of hiring.
      - Conditions of service.
    - Apprentices.
      - Who may apprentice.
    - Labourers.
    - Superior servants.
  2. How master and servants are affected by relationship.
  3. Strangers—how affected by contract of hiring.
    - Power of master to protect.
    - Right of master to retain services.
    - Liability of master for servant's acts or negligence.
  4. Settlement of disputes between masters and servants.
  5. Mechanics' liens.
  6. Protection of employees in course of their employment.
2. HUSBAND AND WIFE.
    1. How marriages may be contracted.
      - Marriage a civil contract.

## Parties must be

1. Willing } to contract.
2. Able }
  - Disabilities—1. Canonical. 2. Municipal. Such are 1. Prior marriage.
  - 2. Want of age.
  - 3. Want of parents' or guardians' consent.
  - 4. Want of reason.
  - 5. Parties must marry by form of law.
2. How marriages may be dissolved.
  - Either by death or divorce.
  - Divorce may be
    - Total—*a vinculo matrimonii*.
    - Partial—*a mens et thoro*.
  - Legal consequences of dissolution.
3. Liability of husband for wife.
  - May not give evidence for or against one another.
  - Order for protection of earnings of married women.
3. PARENT AND CHILD.
  - Children are legitimate and illegitimate.
  - As to legitimate children.
    1. Legal duties of parents.
      - Maintenance.
      - Protection.
      - Education.

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| <p>2. Power of parents.<br/>As to illegitimate children.<br/>Children born during<br/>wedlock may be ille-<br/>gitimate—when.<br/>Duty of parents.<br/>Rights and incapacities.</p> <p>4. GUARDIAN AND WARD.<br/>Kinds of guardians.</p> | <p>By nature.<br/>For nurture.<br/>In socage "by the common<br/>law."<br/>By statute or testament-<br/>ary.<br/>Infants.<br/>At what period of age.<br/>Privileges and disabilities.</p> |
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Having thus commented on the rights and duties of persons, as standing in the public relations of magistrates and people, the method I have marked out now leads me to consider their rights and duties in private economical relations.

The three great relations in private life are: 1. Relations  
That of master and servant; which is founded in con-  
venience, whereby a man is directed to call in the assist-  
ance of others where his own skill and labour will not  
be sufficient to answer the cares incumbent upon him.  
2. That of husband and wife; which is founded in  
nature, but modified by civil society; the one directing  
man to continue and multiply his species, the other  
prescribing the manner in which that natural impulse  
must be confined and regulated. 3. That of parent and  
child, which is consequential to that of marriage, being  
its principal end and design; and it is by  
virtue of this relation that infants are protected,  
maintained and educated. But, since the parents  
on whom this care is primarily incumbent may  
be snatched away by death before they have  
completed their duty, the law has, therefore, pro-  
vided a fourth relation, that of guardian and ward,  
which is a kind of artificial parentage, in order to supply  
the deficiency, whenever it happens, of the natural. Of  
all these relations in their order.

#### Master and servant.

In discussing the relation of master and servant, I shall, first, consider the several sorts of servants, and how this relation is created and destroyed; secondly, the effect of this relation with regard to the parties

themselves; thirdly, its effect with regard to other persons. I shall then state, fourthly, the provisions made by law for promoting settlement of disputes between employers and employed; and next, fifth, show how the wages of workmen are secured by giving them a lien on the subject of their labour; and lastly, and sixthly, state how the law endeavours to protect employees in the course of their employment.

I. As to the several sorts of persons: I have formerly observed that pure and proper slavery does not, nay, cannot subsist in Ontario; such, I mean, whereby an absolute and unlimited power is given to the master over the life and fortune of the slave. And, indeed, it is repugnant to reason and the principles of natural law that such a state should subsist anywhere.

General  
servant.

1. The first sort of servants, therefore, acknowledged by the laws of Ontario are menial servants; so called from being *intra moenia* or domestics. This term applies not only to menial servants, commonly known as such, but also to persons employed for him in a person's domestic establishment, or in his business, e.g., tutors, governesses or clerks. The contract between them and their masters arises upon the hiring, and may be presumed from the fact of service. If the hiring be general, without any particular time limited, the law (if there be no custom to the contrary) construes it to be a hiring for a year, upon a principle of natural equity that the servant shall serve and the master maintain him throughout all the revolutions of the respective seasons—as well when there is work to be done as when there is not; but the contract may be made for any longer or shorter term; though no voluntary contract of service is binding for longer than nine years. Verbal as well as written agreements are binding between master and servant; but a verbal agreement is not permitted to exceed the term of one year. A quarter's notice expiring at the end of some year of the service is sufficient to determine in all cases; but a general hiring at weekly wages is a weekly hiring, and only requires a week's notice to determine it. A domestic servant is only usually entitled to a month's warning, or a month's

wages, and if a servant positively refuses to obey his master's orders, he will be warranted in turning him away. Gross moral misconduct, whether pecuniary or otherwise, and habitual negligence in business, or conduct calculated seriously to injure his master's business, will also justify the discharge of a servant. An artisan who has been engaged for a term of work in the art he practices upon his representing himself to possess the requisite skill may, on his proving to be incompetent, be discharged by his employer before the end of the term for which he was engaged. Persons leaving the employ of their master, or refusing to work after entering into an engagement, and contrary thereto, are liable to punishment.

2. Another species of servants are called apprentices (from *apprendre*, to learn), and are usually bound for a term of years, by deed indented or indentures to serve their masters, and be maintained and instructed by them. This is usually done to persons of trade, in order to learn their art and mystery; and sometimes very large sums are given with them, as a premium for such their instruction; but it may be done to husbandmen, nay, to gentlemen and others.

Minors may bind themselves to perform any service Minors. or work when they are over sixteen years of age, and have no parent or legal guardian. Parents, guardians, R. S. O. or other persons having the care or charge of a minor; c. 142. or any charitable society authorized by the Lieutenant-Governor in council so to do, and having charge of a minor, may, if the minor be a male and over fourteen years, bind him, with his consent, apprentice by indenture to any respectable and trustworthy master-mechanic, farmer, or other person carrying on a trade, for a term not to exceed the minority of the apprentice; or, if a female, not under twelve, may, with her consent, bind her to a trade, or to domestic service, for any term not to extend beyond the age of eighteen years. The same power is given to a mother when the father abandons his children, and to the mayor of a city or Judge of a County Court, or police magistrate in the case of

orphans or deserted children. The duties of masters to their apprentices are to provide them during the term of apprenticeship suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the indenture, and also properly teach and instruct them, or cause them to be taught and instructed in their trade or calling. Apprentices must obey their masters' lawful commands, and must not absent themselves from his service day or night without his consent. Complaints by or against apprentices are cognizable by a Judge of a County Court, a police magistrate, or the Court of General Sessions.

**Labourers.**

3. A third species of servants are labourers, who are only hired by the day or the week, and do not live *intra moenia* as part of the family, concerning whom statutes in England have made many very good regulations :\* 1. Directing that all persons who have no visible effects may be compelled to work. 2. Defining how long they must continue at work in summer and in winter. 3. Punishing such as leave or desert their work. 4. Inflicting penalties on such as either give or exact more wages than are so settled: and, formerly, the justices of the peace at session, or the sheriff, were empowered to settle their wages; but this power is taken away by the 53 Geo. III. c. 40.

**Superior servants.**

4. There is yet a fourth species of servants, if they may be so called, being rather in a superior or ministerial capacity; such as stewards, factors and bailiffs, whom, however, the law considers as servants *pro tempore* with regard to such of their acts as affect their masters' or employers' property. Which leads me to consider:

II. The manner in which this relation of service affects either the master or servant.

\* It is a pity that some of this legislation has not been revived in Ontario. It would probably do more to abate the "tramp" nuisance than the present system of gravely convicting vagabonds as criminals and sending them to be idle in gaol at public expense, and then to turn them loose to recommence their wandering life reinvigorated by their enforced rest.



A master may by law correct his apprentice for negligence or other misbehaviour, so it be done with moderation; though, if the master or master's wife beats any other servant of full age, it is good cause of departure. But, if any servant, workman, or labourer assaults his master or dame, he shall suffer one year's imprisonment, and other open corporal punishment, not extending to life or limb.

Powers of master.

By service all servants and labourers, except apprentices, become entitled to wages according to their agreement, if menial servants; but if there has been no beneficial service owing to the gross fault of the person employed, he is entitled to no pay; and, if his work has been productive of injury rather than benefit, he is liable to an action. If a servant quits his master without cause, he also forfeits his right to wages. Complaints of servants for non-payment of wages are settled before justices of the peace with an appeal to the Judge of the Division Court. In cities the police magistrate tries such cases. If a set-off is claimed by a master it must be disposed of by the magistrate. The jurisdiction of the magistrate extends to wages for thirty days, though the balance exceeds \$40. In other cases the limit is \$40.

Rights of servants to wages.

59 Vict. c. 38.

III. Let us, lastly, see how strangers may be affected by this relation of master and servant, or how a master may behave towards others on behalf of his servant; and what a servant may do on behalf of his master.

Strangers as between master and servant.

And, first, the master may maintain, that is, abet and assist his servant in any action at law against a stranger: whereas, in general, it is an offence against public justice to encourage suits and animosities by helping to bear the expense of them, and is called in law maintenance. A master may also bring an action against any man for beating or maiming his servant: but in such case he must assign, as a special reason for so doing, his own damage by the loss of his service; and this loss must be proved upon the trial. A master likewise may justify an assault in defence of his servant,

and a servant in defence of his master: the master because he has an interest in his servant, not to be deprived of his service; the servant, because it is part of his duty, for which he receives his wages, to stand by and defend his master. Also if any person hires and retains my servant, being in my service, for which the servant departs from me and goes to serve the other, I may have an action for damages against both the new master and the servant, or either of them: but if the new master did not know that he is my servant, no action lies, unless he afterwards refuse to restore him upon information and demand. The reason and foundation upon which all this doctrine is built seem to be the property that every man has in the service of his domestics; acquired by the contract of hiring, and purchased by giving them wages.

How far a  
servant  
may bind  
his master.

As for those things which a servant may do on behalf of his master, they seem all to proceed upon the principle that the master is answerable for the act of his servant, if done by his command, either expressly given or implied: "*nam qui facit per alium, facit per se,*" unless such act be "*malum in se,*" or one that the servant knows to be unlawful. Therefore, if the servant commit a trespass by the command or encouragement of his master, the master shall be guilty of it, though the servant is not thereby excused, for he is only to obey his master in matters that are honest and lawful. If an innkeeper's servant rob his guests, the master is bound to make restitution: for as there is a confidence reposed in him, that he will take care to provide honest servants, his negligence is a kind of implied consent to the robbery; "*nam, qui non prohibet, cum prohibere possit, jubet.*" So likewise if the drawer at a tavern sells a man bad wine, whereby his health is injured, he may bring an action against the master: for although the master did not expressly order the servant to sell it to that person in particular, yet his permitting him to draw and sell it at all is impliedly a general command.

In the same manner, whatever a servant is permitted to do in the usual course of his business, is

equivalent to a general command. If I pay money to a banker's servant the banker is answerable for it: if I pay it to a clergyman's or a physician's servant, whose usual business is not to receive money for his master, and he embezzles it, I must pay it over again. A wife, a friend, a relation, that used to contract business for a man, are quoad hoc his servants; and the principal must answer for their conduct: for the law implies that they act under general command; and without such a doctrine as this no mutual intercourse between man and man could subsist with any tolerable convenience. If I usually deal with a tradesman by myself, or constantly pay him ready money, I am not answerable for what my servant takes upon trust; for here is no implied order to the tradesman to trust my servant: but if I usually send him upon trust, or sometimes upon trust and sometimes with ready money, I am answerable for all he takes up; for the tradesman cannot possibly distinguish when he comes by my order and when upon his own authority. Where the authority of a servant to bind his master upon contracts arises by implication only, the authority of the servant is co-extensive with his usual employment, and the scope of his authority is to be measured by the extent of his employment.

If a servant, lastly, by his negligence does any damage to a stranger, the master shall answer for his neglect: if a smith's servant lames a horse while he is shoeing him, an action lies against the master, and not against the servant. But in these cases the damage must be done while he is actually employed in the master's service; otherwise the servant shall answer for his own misbehaviour. Upon this principle, by the common law, if a servant kept his master's fire negligently, so that his neighbour's house was burned down thereby, an action lay against the master, because this negligence happened in his service: otherwise, if the servant, going along the street with a torch, by negligence sets fire to a house; for there he is not in his master's immediate service, and must himself answer the damage personally. But now the common law is, in the former case, altered by the statute 6 Anne, c. 31,

Negligence by a servant.

which ordains that no action shall be maintained against any in whose house or chamber any fire shall accidentally begin; for their own loss is sufficient punishment for their own or their servant's carelessness. But if such fire happens through negligence of any servant he shall forfeit £100, to be distributed among the sufferers; and, in default of payment, shall be committed to some workhouse, and there kept to hard labour for eighteen months. A master is, lastly, chargeable if any of his family lays or casts anything out of his house into the street or common highway, to the damage of any individual, or the common abuse of His Majesty's liege people: for the master has the superintendence and charge of all his household.

We may observe that in all the cases here put the master may be frequently a loser by the trust reposed in his servant, but never can be a gainer; he may frequently be answerable for his servant's misbehaviour, but never can shelter himself from punishment by laying the blame on his agent. The reason of this is still uniform and the same; but the wrong done by the servant is looked upon in law as the wrong of the master himself; and it is a standing maxim, that no man shall be allowed to make any advantage of his own wrong.

Servant's  
character.

It would seem that a master is not compellable to give a servant any character at all.

Responsi-  
bility of  
master for  
servant's  
acts.

The general principle as to the responsibility of an employer for the acts or negligence of the person employed seems to be that such responsibility arises, and a person becomes responsible for the wrongful act or negligence or unskilfulness of his domestic servants, and of those whom the law denominates his servants; if such act, negligence or unskilfulness accrues strictly in the course of their employment as servants to him. Not so when the injury (wilful or otherwise) was not done by the servant strictly in the course of his employment. If the master knew the servant to be of such a character that such an injury would not be unlikely to happen, and employs him notwithstanding, he is liable for any damage the servant may do. A master is not

liable for injury done to one servant by another servant, provided the servants were engaged in one common employment, or in one common general object; and provided the servant was not exposed to unreasonable risks, and the master endeavoured to select proper servants, and did not knowingly acquiesce in the negligence. The reason is, that the risk of such injury was contemplated by the servant when he entered the service.

Agreements may be entered into between workmen and employers by which a defined share in the annual or other net profits of the business may be allotted to the workman in lieu of, or in addition to, wages; this agreement does not create any relation in the nature of partnership, or any rights or liabilities of co-partners; the workman has no right to examine into the accounts or interfere in any way in the management or concerns of the business. Any periodical statement by the employer of the net profits of the business is final and conclusive, and cannot be impeached upon any ground whatever. Every agreement of the kind just described is deemed to be liable to the same rules; if it is intended that the agreement shall not be liable to these rules, that intention must be expressly stated.

Agree-  
ment to  
share pro-  
fits.

R. S. O.  
c. 123.

All agreements between masters and labourers or servants are binding on both parties, whether the performance has been entered into or not. If, after the termination of an engagement, any dispute arises between the master and servant, a justice of the peace can decide the matter, but proceedings must be taken within one month after the engagement has ceased. Agreements made out of Canada for service in Ontario are void. Persons may, however, engage skilled workmen not resident in Canada to perform labour in Ontario upon any new industry if skilled labour for the purpose of that industry cannot be otherwise obtained. Teachers, professional actors, artists, labourers or servants are liable on contracts for service made out of Ontario and can maintain them.

Agree-  
ments for  
service  
made out  
of Ontario.

IV. Provisions for facilitating the adjustment of disputes between masters and workmen.

Adjust-  
ment of  
disputes.

R. S. O.  
c. 140.

For this purpose a board of arbitration may be formed. Any number of masters and workmen in any particular locality may agree in writing to form this board. The memorandum of agreement must be filed in the registry office of the proper registry division; the board must consist of not less than two masters and two workmen, and of not more than ten masters and ten workmen and a chairman. The board appoints its own chairman and also two clerks, one for the masters and the other for the workmen; it has power to hear and determine all questions of disputes and differences between the masters and workmen, signing the memorandum or becoming party to it. The award made by the board is final and conclusive, and is not subject to review or challenge by any Court whatever. A committee of the board is called the committee of reconciliation; it consists of one master and one workman, and all questions which are submitted to the board must, in the first instance, be referred to this committee, who endeavour to reconcile the parties in difference; if they cannot effect a reconciliation, the matter in dispute must be referred to the board, to be disposed of as a contested matter. No counsel or solicitor is allowed to attend before the board or the committee of reconciliation unless both parties agree. Annual elections are held for the purpose of appointing the members who constitute the board. Masters and workmen are only entitled to vote. Domestic servants and servants in husbandry are not under the control of this board.

Trade  
Unions.

R. S. C.  
c. 131.

A trade union has been defined to be such combination, whether temporary or permanent, for regulating the relations between workman and master, or for imposing restrictive conditions on the conduct of any trade or business as would but for what is thus allowed by law have been deemed to be an unlawful combination by reason of one or more of its purposes being in restraint of trade. Trade unions are formed as follows:

Any seven or more members of a union may, by subscribing their names to the rules of the union, register it; if any one of the purposes of the union is unlawful,

the registration is void. The Registrar-General of Canada is the registrar with whom the union is registered. A registered trade union is managed by trustees, who take in their own names lands for its purposes not exceeding one acre; they hold all real and personal property belonging to the union, and bring or defend actions or suits brought against it. The rules of the union registered must provide for a name and place of meeting. They must define the object of the union and make provisions for the general management of its affairs; such as the manner of making and altering rules; appointment of committee of management; investment of funds and audit of accounts. An annual statement of affairs must be sent to the registrar in each year. The purposes of a trade union, by reason merely that they are in restraint of trade, are not to be deemed unlawful, so as to render any member of a union liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust. Certain particular offences are strictly forbidden: combinations for the purpose of unlawfully limiting facilities for transportation, restraining commerce, limiting production or hindering competition; an offender in these directions is liable to a penalty not exceeding \$4,000 or not less than \$2,000, and to imprisonment for a term not less than two years. Certain agreements are mentioned as not being capable of legal enforcement:

1. Any agreement between members of a trade union, as such, concerning the conditions on which its members may sell goods, transact business, employ or be employed.
2. Any agreement for the payment of any subscription or penalty to a union.
3. Any agreement for the application of the funds of the union: (a) To provide benefits to members; (b) To furnish contributions to any employer or workman not a member of the union, in consideration of the employer or workman acting in conformity with the rules and regulations of the union; or (c) To discharge any fine imposed upon any person.
4. Any agreement between one trade union and another.
5. Any bond to secure the performance of any of these agreements.

No person who is a master, or



the father, son or brother of a master in the particular trade or business in connection with which any offence is, under the Act, charged to have been committed, can Act as magistrate or justice of the peace.

Mechanics'  
Liens,  
1890, c. 35.

V. For the benefit of mechanics who are employed upon buildings or furnish machinery, certain provisions have been made to secure on the property itself the wages or value. These provisions run as follows:

Every person doing work upon, or furnishing materials to be used in the construction, alteration or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with any building, erection or mine, by virtue of being so employed, or furnishing, has a lien for the price of the work, machinery or materials upon the building, erection or mine, and the lands occupied thereby, or enjoyed therewith.\* The lien attaches upon the estate and interest of the owner in the building, erection or mine upon or in respect of which the work is done, or the materials or machinery placed or furnished. An owner is a person who has any estate or interest in the lands upon or in respect of which the work is done, or materials or machinery placed or furnished, at whose request, and upon whose credit, or on whose behalf, or with whose privity or consent, or for whose direct benefit the work is done, or materials or machinery placed or furnished. All persons claiming under the owner, whose rights are acquired after the work is commenced, or the materials or machinery have been commenced to be furnished, are in the same position as the original owner. If the estate or interest charged by the lien is leasehold, the fee simple may also be subject to the charge if the consent is testified by the signature of the owner upon the claim of lien when registered. If the land is encumbered by a prior mortgage or other charge, and the selling value of the land is increased by the construction or repairs of the building, or by the erection or placing of the materials or machinery, the lien is entitled to rank upon the increased value in priority to the mortgage or

Position of  
mortgagee

\* No man can, by agreement, contract himself out of the Act.

other charge. Every mechanic or labourer whose lien is for wages has to the extent of the interest of the owner, besides any other lien he may have, a lien for his wages not exceeding thirty days, or a balance equal to his wages for thirty days. When the labour is in respect of property belonging to the wife of the person at whose expense the work was done it attaches to that property as if she had ordered it, unless there was actual notice to the contrary. The owner is entitled to retain for a period of thirty days after the completion of the contract twenty per cent. of the price which was to be paid to the contractor, unless the contract is over \$15,000 when the amount to be retained is fifteen per cent., and these reserves are subject to the lienholders' claims. If the lien is claimed by any other person than the contractor, the amount which may be claimed by him is limited to the amount payable to the contractor or sub-contractor, as the case may be, for whom the work was done, or materials or machinery furnished or placed. All payments up to eighty per cent. of the price to be paid for work, machinery or materials, or eighty-five per cent. where the contract price exceeds \$15,000, made in good faith by the owner to a contractor, or by one sub-contractor to another sub-contractor, before notice in writing has been given by the person claiming a lien to an owner, contractor or sub-contractor, is a good payment and discharges pro tanto the lien. A lien for wages for thirty days, or for a balance equal to wages for thirty days, has, to the extent of twenty, or fifteen per cent. of the contract price, priority over all other liens, and over any claim by the owner against the contractor on account of failure of the latter to complete his contract. A lien cannot attach so as to make the owner liable for a greater sum than the sum paid by him to the contractor, unless he disregards the provisions of the Act and does not hold the twenty or fifteen per cent. Payment made after an award, or without an award, of a just debt of a contractor operates as a discharge pro tanto of the money due to the person primarily liable, if notice of the payment is given within three days. During the continuance of the lien no por-

Reserve to  
be retained  
for liens.

Payments  
to contrac-  
tor's credi-  
tors.

Registration.

Proceeding on lien.

Discharge.

Lien on chattels.

tion of the property or machinery affected by it can be removed; any payment may be restrained by injunction. A claim of lien may be registered in the registry office of the registry division verified by the affidavit of the claimants. A claim may include any number of properties. When registered, the person entitled to the lien is deemed a purchaser pro tanto, and within the provisions of the Registry Act. When the claim is for wages it may be registered at any time within thirty days after the last day's labour, or at any time within thirty days after the completion of the construction of the building or erection of the machinery. In other cases than for wages a claim of lien may be registered before or during the progress of the work, or within thirty days after its completion. Every lien which has not been registered ceases to exist at the expiration of the time allowed for registration unless an action is commenced and a certificate registered. Every lien which has been registered ceases to exist after the expiration of ninety days after the work has been completed, unless in the meantime proceedings are instituted to realize the claim, and a certificate of those proceedings registered in the registry office. In all cases the lien may be realized in the High Court, but expense is reduced to a nominal sum and the procedure is made as simple as possible. Any number of lienholders may join in one action, and any action brought by one lienholder shall be taken to be brought on behalf of all other lienholders. When judgment is in favour of a lien a sale may be ordered. A lien may be discharged by a receipt signed by the claimant or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and filed. Where any mechanic, artisan, machinist, builder, miner, contractor, or any other person furnishes materials for use in buildings at the request of some person, these materials cannot be seized in execution to enforce any debt other than for their purchase due by the person who furnishes or procures the materials.

Every mechanic who bestows money or skill and materials upon any chattel or thing in the alteration and improvement in its properties, or for the purpose of

imparting an additional value to it, has a lien upon this chattel or thing while it exists, but not afterwards. If the amount to which he is entitled remains unpaid for three months after it ought to have been paid, he will have the right to sell the chattel or thing on giving one week's notice by advertisement in a newspaper published in the municipality in which the work is done; if there is no newspaper published in the municipality, then in the newspaper published nearest to it, and also leave notice in writing at the owner's residence. The proceeds of sale must be applied in payment of the amount due, and costs. The surplus is paid to the person entitled.

In Algoma, Thunder Bay and Rainy River, a wood-<sup>Wood-</sup>man's lien for labour on logs or timber is allowed.<sup>man's lien.</sup>

VI. The protection afforded by law to workmen in the course of their employment is our next subject for consideration. We have already\* seen that in mines special care must be taken in their construction and working, so as to secure as much safety as possible.

In factories it is not lawful to employ any child, young girl or woman so that the health of the child, young girl or woman is likely to be permanently injured. To secure this object the following provisions are laid down :

No boy under twelve years of age, and no girl under fourteen years of age, can be employed in any factory.

No child between the ages of twelve and fourteen can be employed in any factory unless the employer of the child has in his possession and produces either a certificate signed by the parent of the child as to the age of the child, or the written opinion of a registered physician that the child is not less than twelve years of age. It is not lawful for a child, young girl or woman to be employed for more than ten hours in a day, nor

\* The Dominion Parliament has passed an Act (59 Vict. c. 5) for securing to workmen on Dominion public works a preference for their wages. See Provincial legislation on same subject mentioned page 158 ante. Page 155 ante.

more than sixty hours in a week, unless a different apportionment of the hours of labour per day has been made for the sole purpose of giving a shorter day's work on Saturday. In every factory the employer must allow every child, young girl or woman employed not less than one hour at noon of each day for meals; this hour is not counted as part of the time limited as respects the employment of children, young girls and women. If the factories inspector appointed by the Lieutenant-Governor so directs the employer must allow employees' meals to be eaten in a room appointed for this purpose in the factory. Boys under twelve and girls under fourteen, during the months of July, August and September, may be employed in preparing fruits and vegetables for canning purposes; the child is not allowed to clean any part of the machinery in a factory while it is in motion by the aid of any mechanical power. A young girl or woman cannot be allowed to clean any part of the machinery in a factory, such as mill gearing, while it is in motion for the purpose of propelling any part of the machinery. A child or young girl is not allowed to work between the fixed and traversing part of any self-acting machines while in motion. Regulations may be made by Government to prevent the occurrence of any accident from any machinery, or bad sanitary condition of manufacturing premises. In every factory all machinery must be protected, and there must be ample means for the prevention of fire. Notice must be given of any accident in a factory within six days after the occurrence of the accident. Very large powers are given to the inspector of factories as to inspection and investigation, and persons interfering with him in the course of his duties are punishable by fine and imprisonment.

R. S. O.  
c. 211.

Accidents from threshing machines are also guarded against as far as possible.

Compensation for  
Injuries to  
Workmen.

Compensation may be awarded for injuries sustained in the following manner: (1) By reason of defect in machinery; (2) negligence of any person in the employer's service; (3) negligence of any person in the employer's service under whose order the workman was at

the time of the injury; or (4) when the injury was caused through obedience to the rules or by-laws of the employer, or to particular instructions given by any person delegated by the employer; or (5) in the case of railway, tramway or street railway companies, by reason of the negligence of any person in the service of the employer who has the charge or control of any signal points, locomotive engine or train. Special provisions are made further with regard to railways, regulating the height of overhead bridges: (1) These bridges must be at least seven feet above the top of the highest freight car. (2) The space between the rails in any railway frog extending from the point of the frog backward to the point where the heads of the rails are not less than five inches apart must be filled in with packing. (3) The space between any wing rail and any railway frog, and between any guard rail and any other rail alongside, except during the months between October and April, must be filled in with packing. If, in these three cases, any injury is caused by reason of non-compliance with these rules, this injury is deemed to be an injury caused by defect in machinery. The amount of compensation recoverable cannot exceed a sum equivalent to the estimated earnings during three years preceding the injury of a person in the same employment in the same grade during those years in a like employment within Ontario, or fifteen hundred dollars, whichever is larger. An action for recovery of compensation for the above causes is not maintainable without notice of injury having been given within twelve weeks. The action must be commenced within six months after the date of the accident; or, in case of death, within twelve months from the time of death. In the case of death, if the Judge is of opinion that there was reasonable excuse for want of notice, then the want of the notice is no bar to the action. Workmen cannot contract themselves out of the operation of the Act unless under the following circumstances: (1) If there was any other consideration than that of the workman's being taken or continued in the master's employ; and (2) unless this other consideration is in the opinion of a Court or Judge

Cases in which Act does not apply.

ample and adequate; and (3) unless in the opinion of the Court or a Judge the contract in view of the other consideration was not on the part of the workman improvident, but was just and reasonable. In case a compensation is awarded to a workman for injury, as above explained, any penalty or damages exacted by the Legislature which may have been paid to the workman must be deducted. Upon the trial of the action assessors may be appointed for the purpose of ascertaining the amount of compensation. Railway companies which have established a benefit society for the benefit of their employees are not subject to the further liability of being sued for compensation in the manner above explained, so far as relates to workmen who join the company's benefit society. Any other workman who is not a member of the benefit society may claim compensation in the manner above explained.

*The following Statutes Relate to above Subject of Master and Servant.*

Poor.

- 337..Master and Servant Act—R. S. O. c. 139 ; 1888 cc. 23, 33 ; 1889 cc. 22, 44 ; 1891 c. 24 ; 1896 c. 38.
- 337..Apprentices and Minors—R. S. O. c. 142.
- 344..Adjustment of Disputes—R. S. O. c. 140 ; 1890 c. 40.
- 344..Trades Unions—R. S. C. c. 131.
- 348..Mechanics' Liens—1896 c. 35.
- 351..Woodmen's Lien for Wages—1891 c. 92 ; 1894 c. 38 ; 1896 c. 36.
- 351..Wages for Labor on Public Works—1896 c. 37 (Ont.), (page 158 ante) ; 1896 c. 5 (Dom).
- 351..Protection of Persons employed in Factories—R. S. O. c. 208 ; 1889 c. 43 ; 1892 c. 54 ; 1895 c. 50.
- 351..Protection of Accidents from Threshing Machines—R. S. O. c. 211.
- 352..Steam Threshers—1889 c. 45.
- 352..Compensation for Injuries—1892 c. 30 ; 1893 c. 26.



The second private relation of persons is that of marriage, which includes the reciprocal right and duties of husband and wife; or, as most of our elder law books call them, of baron and feme. In the consideration of which I shall in the first place inquire how marriages may be contracted or made; shall next point out the manner in which they may be dissolved; and shall, lastly, take a view of the legal effects and consequences of marriage.

I. Our law considers marriage in no other light than as a civil contract, and treats it as it does all other contracts; allowing it to be good and valid in all cases where the parties at the time of making it were, in the first place, willing to contract; secondly, able to contract; and, lastly, actually did contract in the proper forms and solemnities required by the law.

First, they must be willing to contract. "Consensus non concubitus, facit nuptias," is the maxim of the civil law in this case; and it is adopted by the common lawyers, who, indeed, have borrowed (especially in ancient times) almost all their notions of the legitimacy of marriage from the canon and civil laws.

Secondly, they must be able to contract. In general, all persons are able to contract themselves in marriage, unless they labour under some particular disabilities and incapacities. What those are, it will be here our business to inquire.

Now these disabilities are of two sorts: first, such as are canonical, and therefore sufficient by the ecclesiastical laws to avoid the marriage in the spiritual court; but all of those in our law only made the marriage voidable, and not ipso facto void, until sentence of nullity be obtained. Of this nature are pre-contract; some particular corporal infirmities; consanguinity, or relation by blood, and affinity, or relation by marriage. These canonical disabilities being entirely the province of the ecclesiastical courts, our books are perfectly silent concerning them. But there are a few statutes which serve as directors to those courts, of which it will be proper

Husband  
and wife.

Marriage  
a civil con-  
tract.

Disabili-  
ties—

1. Canon  
cal.

32 Henry VIII. c. 38 to take notice. By statute 32 Hen. VIII. c. 38, it is declared that all persons may lawfully marry, but such as are prohibited by God's law: and that all marriages contracted by lawful persons in the face of the Church, and consummated with bodily knowledge and fruit of children, shall be indissoluble. And (because in the times of popery a great variety of degrees of kindred were made impediments to marriage, which impediments might, however, be bought off for money) it is declared by the same statute, that nothing (God's law excepted) shall impeach any marriage, but within the Levitical degrees; the farthest of which is that between uncle and niece.

2. Civil.

The other sort of disabilities are those which are created, or at least enforced, by the civic laws. And, though some of them may be grounded on natural law, yet they are regarded by the laws of the land, not so much in the light of any moral offence, as on account of the civil inconveniences they draw after them. Civil disabilities make the contract void ab initio, and not merely voidable; not that they dissolve a contract already formed, but they render the parties incapable of forming any contract at all: they do not put asunder those who are joined together, but they previously hinder the junction. And, if any persons under these legal incapacities come together, it is a meretricious, and not a matrimonial, union.

Prior marriage.

1. The first of these legal disabilities is a prior marriage, or having another husband or wife living; in which case, besides the penalties consequent upon it as an indictable offence, the second marriage is to all intents and purposes void; polygamy being condemned both by the law of the New Testament and the policy of all prudent states, especially in these northern climates.

Want of age.

2. The next legal disability is want of age. This is sufficient to avoid all other contracts, on account of the imbecility of judgment in the parties contracting; a fortiori, therefore, it ought to avoid this, the most important contract of any. Therefore, if a boy under

fourteen, or a girl under twelve years of age, marries, this marriage is only inchoate and imperfect; and, when either of them comes to the age of consent aforesaid, they may disagree and declare the marriage void, without any divorce or sentence in the spiritual court. This is founded on the civil law. But the common law pays a greater regard to the constitution than the age of the parties; for if they are "*habiles ad matrimonium*" it is a good marriage, whatever their age may be; and in our law it is so far a marriage, that, if at the age of consent they agree to continue together, they need not be married again. If the husband be of years of discretion, and the wife under twelve, when she comes to years of discretion, he may disagree as well as she may: for in contracts the obligation must be mutual; both must be bound, or neither;\* and so it is, vice versa, when the wife is of years of discretion, and the husband under.

B. Another incapacity arises from want of consent<sup>Want of consent.</sup> of parents or guardians. By the common law, if the parties themselves were of the age of consent there wanted no other concurrence to make the marriage valid; and this was agreeable to the canon law. But, by several statutes, penalties of £100 were laid on every clergyman who married a couple either without publication of banns (which might give notice to parents or guardians) or without a license, to obtain which the consent of parents or guardians must be sworn to.

By statute 26 Geo. II. c. 33, it was enacted<sup>26 Geo. II. c. 33.</sup> that all marriages celebrated by license (for banns suppose notice), where either of the parties was under twenty-one (not being a widow or widower, who are

\* These are Blackstone's words and I have not altered them. They are not quite exact. A person under twenty-one years of age may maintain an action for breach of contract to marry against a person over twenty-one years of age while the latter cannot maintain that action against the former. If the minor plaintiff were under twelve years of age the defence would be good that the marriage was a nullity. But if the minor plaintiff were between twelve and twenty-one years of age when the contract was made there is a case where one party may be bound to another who is not bound. Such a contract is called a Unilateral Contract.

supposed emancipated), without the consent of the father, or, if he were not living, of the mother or guardian, should be absolutely void.\*

Want of  
reason.

4. A fourth incapacity is want of reason: without a competent share of which, as no other, so neither can the matrimonial contract be valid. It was formerly adjudged that the issue of an idiot was legitimate, and consequently that his marriage was valid. A strange determination; since consent is absolutely requisite to matrimony, and neither idiots nor lunatics are capable of consenting to anything. And, therefore, the civil law adjudged much more sensibly when it made such deprivations of reason a previous impediment, though not a cause of divorce, if they happened after marriage. And modern resolutions have adhered to the reason of the civil law, by determining that the marriage of a lunatic, not being in a lucid interval, was absolutely void. But, as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, upon this account (concurring with some private family reasons) the statute 15 Geo. II. c. 30, has provided, that the marriage of lunatics and persons under frenzies if found lunatics under a commission, or committed to the care of trustees by any Act of Parliament, before they are declared of sound mind by the Lord Chancellor or the majority of such trustees, shall be totally void.

15 Geo. II.  
c. 30.

5. Lastly, the parties must not only be willing and able to contract, but actually must contract themselves in due form of law, to make it a good civil marriage.

Solemniza-  
tion of  
marriage.

The solemnization of marriage in the province is the twelfth subject relegated to the exclusive authority of the province by section 92 of the B. N. A. Act.

†In Ontario the following persons may solemnize marriage between any two persons not under a legal

\* See page 361, post.

† The Marriage Act, 1896, which is the authority for the text, will not come into force until August 1st, 1896. Until that date reference must be

disqualification to contract such marriage, but no minister may solemnize marriage unless authorized so to do under the hand and seal of the Lieutenant-Governor. <sup>59 Vict. c. 39.</sup>

1. The ministers and clergymen of every church or religious denomination duly ordained or appointed according to the rules of their respective denominations.

2. Any elder, evangelist or missionary of the people known as "Congregations of God," or "of Christ," or called "Disciples of Christ," chosen for the purpose of solemnizing marriage.

3. Any duly appointed commissioner or staff officer of the Salvation Army chosen for the same purpose.

The ceremony need not be in any consecrated church or chapel, or within any particular hours.\* Marriages may be solemnized either after publication of banns, or after the obtaining of a license issued under the hand and seal of the Lieutenant-Governor. In case of an intended marriage after publication of banns only, the banns need only be published on one Sunday, either in the church where one of the parties has been in the habit of attending, or in some church with which the minister who performs the ceremony is connected, in the local municipality where one of the parties has, for fifteen days previously, had his or her usual place of abode. If both parties do not live in the same local municipality, then a certificate must be produced that the banns were proclaimed in some other municipality where the other of the parties resided for fifteen days. The license or certificate is granted by issuers of marriage licenses, who are named by the Lieutenant-Governor in Council for that purpose, and who are fur-

Publica-  
tion of  
banns.

Marriage  
license.

made to R. S. O. chapter 131, and amending Acts. These are 51 Vic. cap. 20, 54 Vic. cap. 23, 57 Vic. cap. 40. Sections 28 and 29 of the Act of 1896 are excepted and are law now, and their effect is stated, page 352 *post*.

\* No marriage can be solemnized between ten o'clock at night and six o'clock in the morning unless the officiating person is satisfied that the proposed marriage is legal, and that exceptional circumstances require that the ceremony should take place. Section 22 of the Act lays down the rule mentioned in the text that it is not a valid objection to the legality of a marriage that it was not solemnized in a consecrated edifice, or within any particular hour.

nished with blank licenses from the office of the Provincial Secretary. Before any certificate is granted by any issuer, one of the parties is required to make oath in what county or district the marriage is to take place; next, that he or she believes there is no affinity, consanguinity, pre-contract or other lawful cause or legal impediment to hinder the marriage, and that one of the parties has had his or her usual place of abode within the judicial district or county in which the local municipality where the marriage is to be solemnized lies. If either of the parties is under eighteen years (and not a widow or widower), the person must also swear that the consent of the person whose consent is required by law has been obtained. No license or certificate can be issued in the case of any person under the age of fourteen years, and no person shall knowingly solemnize the marriage of a contracting party under that age. If either party is under the age of eighteen years, and not a widow or widower, there must be produced to the issuer of licenses the written consent of the person whose consent is necessary to the marriage. This consent must be verified by affidavit. If any issuer has personal knowledge that the facts are such that the marriage cannot legally take place, he must not issue the license or certificate. No license or certificate can be issued between eleven o'clock at night and six o'clock in the morning, except in case of urgent necessity, of which the issuer is the sole judge.

Persons  
whose con-  
sent is re-  
quired.

The persons whose consent is required in the case of persons under eighteen, and not a widow or widower, are the father, if alive, the mother, if the father is dead, and, if both parents are dead, the guardian. If the father or mother, though living, is not resident in the province, and is not in the province at the time of the application for the license, and the party applying is a resident and has been so for the preceding twelve months, then the license may issue. If there is no person to grant such consent, then, an oath being made to that effect, the issuer may grant the certificate. No minister who performs any marriage ceremony after banns published or certificate issued, is liable to an

action for damages, or otherwise, by reason of there being any legal impediment to the marriage, unless he knew of it at the time of the marriage.

As there have been varying requirements in regard to marriages under successive Acts, and objections might be raised on account of non-compliance with these requirements, it has been considered necessary to provide that all marriages celebrated before or after the 7th of April, 1896, between persons not under legal disqualification for entering into the contract of matrimony, are declared, after three years from the day of their solemnization, to be legal and binding as far as respects the civil rights in this province of the parties or their issue, and so far as respects all matters within the jurisdiction of the Ontario Legislature, notwithstanding defects in the publication of banns, or in the marriage license, provided the parties lived together after the marriage and cohabited as husband and wife, and that the validity of the marriage had not been questioned before the above date in any suit.

Confirmation  
of  
marriages.

The reader may ask, What is the result if persons go through the ceremony of marriage in Ontario without observing the requirements of the Ontario Act? The statute does not say that if these requirements are not observed the contract shall be null and void. It provides penalties for those who irregularly celebrate the marriage or who issue the licenses improperly. But what is the position of the parties to the contract? Are they bound or not? Section 22 by implication seems to provide that if it is no objection to a marriage that it was not solemnized in a consecrated edifice or within any particular hours, that non-compliance with the other requisites laid down by the Act would be a good objection to the marriage. But the Act nowhere says so. Until the Legislature does so provide it would seem that the marriage would be a good marriage if the parties did not seek to take advantage of the non-compliance with the Act as a ground of release. If they do contest the marriage on any such ground, then the absence of any clause in the Act declaring for that rea-



son the invalidity of the marriage would probably defeat the attempt to dissolve the contract on that ground. The only causes, therefore, for which in an Ontario Court a marriage could be dissolved are those presently stated.\* Non-compliance with the forms of the Act, it is respectfully submitted, cannot be added as a cause of dissolution. What, then, is the object of the statute? Can it be evaded by suffering the penalties or paying the fines it exacts? What is the object of evading it if the contract stands? The Imperial statute 26 Geo. II. c. 33, makes marriages celebrated by license, where either of the parties is under twenty-one (not being a widow or widower) without the consent of the father, or if he be not living, of the mother or guardians, absolutely void. The absence of such a clause in the Ontario Act leaves this subject in a most unsatisfactory condition. All the above questions may be raised certainly at any time within three years after the date of the ceremony. After three years from that date the Legislature declares that, as above stated, the solemnization is legal and binding, or, in other words, that the marriage is a good marriage so far as regards any of the informalities mentioned. If the contract was originally a good contract this provision was unnecessary. If it might be set aside for informality, what is the position of persons during the three years after the ceremony, who thought they were married, but did not by inadvertence comply with the Act? The question is too serious to trifle with, and should be settled by the Legislature as soon as possible.

Dissolu-  
tion of  
marriage

Divorce *a*  
*vinculo*  
*matrimonii*

II. I am next to consider the manner in which marriages may be dissolved; and this is either by death or divorce. There are two kinds of divorce, the one total, the other partial; the one "*a vinculo matrimonii*," the other merely "*a mensa et thor.*" The total divorce, "*a vinculo matrimonii*," must be for some of the canonical causes of impediment before mentioned; and those existing before the marriage, as is always the case in consanguinity; not supervenient, or arising afterwards, as may be the case in affinity or corporal imbecility. For in all cases of total divorce, the marriage is declared

\* See page 361, post.

null, as having been absolutely unlawful ab initio; and the parties are therefore separated "pro salute animarum"; for which reason, as was before observed, no divorce can be obtained but during the life of the parties. The issue of such marriage as is thus entirely dissolved are bastards.

Divorce "a mensa et thoro" is when the marriage is just and lawful ab initio, and therefore the law is tender of dissolving it; but, for some supervenient cause, it becomes improper or impossible for the parties to live together; as in the case of intolerable ill-temper, or adultery in either of the parties. For the canon law, which the common law follows in this case, deems so highly and with such mysterious reverence of the nuptial tie, that it will not allow it to be unloosed for any cause whatsoever, that arises after the union is made. And this is said to be built on the divine revealed law; though that expressly assigns incontinence as a cause, and indeed the only cause, why any man may put away his wife and marry another. The civil law, which is partly of Pagan origin, allows many causes of absolute divorce, and some of them pretty severe ones (as if a wife goes to the theatre or the public games without the knowledge and consent of the husband); but among them adultery is the principal, and, with reason, named the first.

Divorce "a mensa et thoro."

In case of divorce "a mensa et thoro" the law allows alimony to the wife: which is that allowance which is made to a woman for her support out of the husband's estate; being settled at the discretion of the Judge, on consideration of all the circumstances of the case. This is sometimes called her estovers; for which, if he refuses payment, there was a writ at common law "de estoveris habendis," in order to recover it. It is generally proportioned to the rank and quality of the parties. But in case of elopement, and living with an adulterer, the law allows her no alimony. The subject of divorce is confided to the Dominion by the B. N. A. Act. As has been stated already,\* the Senate disposes

Alimony.

\* See page 222, ante.

of applications for divorce, but the bill, when passed by the Senate, requires the consent of the House of Commons and of the Governor-General to become law. There is no Divorce Court for the Dominion, although there are such Courts in some of the provinces, but not in Ontario. The reason for this difference is that by the B. N. A. Act the laws and Courts in force at the passage of that Act were continued in the respective provinces forming the union.\* Upper Canada had no Divorce Court, nor had the Province of Canada, and therefore Ontario has none, while those in the other provinces continued to exist. No such Court has yet been established by the Dominion, and the result would be intolerable hardship were it not that in the American Union divorces are not difficult to obtain, and if secured without fraud or collusion are recognized in Canada as valid. Either party can therefore rid himself or herself of a distasteful or unworthy partner with comparative facility. For such inhabitants of Ontario as desire a Canadian divorce, the Ontario Courts afford relief only in cases where there never was a legal marriage. That is, in cases of fraud, mistake, duress, lunacy, the absence of consent where the parties are under legal age, and even with consent, if the parties are under age and steps are taken to annul the marriage before they come to that age of consent when they may agree to continue together—in these cases the Ontario Courts may declare that the parties were never married, and pronounce them still unmarried. But “divorce a mensa et thoro” for inhabitants of Ontario can be declared only by Parliament. The main cause for such a declaration is adultery, but it has the power to grant divorce for any cause which would have been recognized by the Ecclesiastical Courts in England.†

\* See section 129, B. N. A. Act.

† The law of divorce in Ontario cannot be said to be satisfactory. The establishment of a Divorce Court for Ontario would, it is believed, be well received in this Province, provided the causes of divorce were restricted as they are in England. Roman Catholics are opposed to divorce on principle. Protestants regard the question as one of expediency and, there is much to be said in favour of properly restricted means of dissolving a bond which confers personal rights while it does

III. Having thus shown how marriages may be made or dissolved, I come now, lastly, to speak of the legal consequences of such making or dissolution.

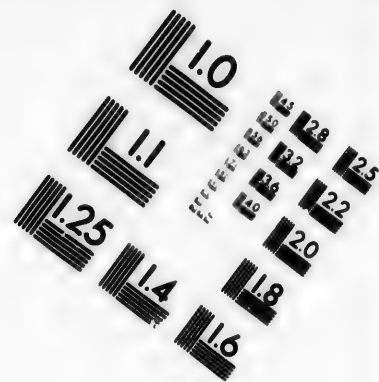
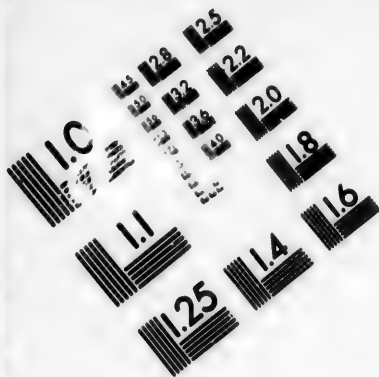
By marriage the husband and wife were for most purposes one person in law: that is, the very being or legal existence of the woman was suspended during the marriage, or at least was incorporated and consolidated into that of the husband, under whose wing, protection and cover she performed everything; hence arose the name "feme-covert," "foemina viro co-operta," she is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture. Upon this principle of a union of persons in husband and wife depend almost all the legal rights, duties and disabilities that either of them acquire by the marriage. I speak not at present of the rights of property, but of such as are merely personal. For this reason, a man could not grant anything to his wife directly, or enter into covenant with her, for the grant would be to suppose her separate existence; and to covenant with her would be only to covenant with himself: but a husband might grant to his wife by means of a trustee or releasee to uses. He may now grant directly to his wife, or a wife to her husband. However, it is generally true, that all compacts made between husband and wife when single are voided by the intermarriage. A woman, indeed, may be attorney for her husband, for that implies no separation from, but is rather a representation of, her lord. And a husband may also bequeath anything to his wife and a wife anything to her husband by will; for that cannot take effect till the coverture is determined by death.\* The

Legal consequences of marriages.

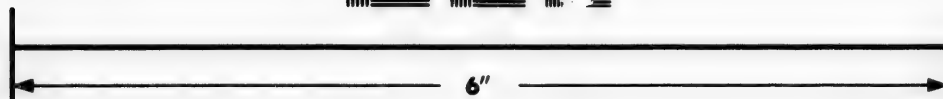
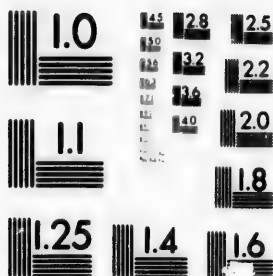
R. S. O. c. 100, s. 5

not necessarily imply in practice corresponding obligations. But has the Dominion Government power to establish a Court for one Province on one subject? Is not the power of the Dominion restricted to the creation of Dominion Courts which shall administer one law throughout the Dominion? If so, Quebec will never consent to a Canadian Divorce Court.

\* Between the 4th May, 1859, and 1st January, 1874, a married woman could make a will of her separate property only to or among her children, issue of any marriage. Failing any issue, then to her husband or anyone else. Before the 4th May, 1859, she could not dispose of her property by will except under a marriage settlement. Since Jan. 1, 1874, the power of a married woman to will her property has been unfettered.



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husband is bound to provide his wife with necessities by law, as much as himself; and if she contracts debts for them, he is obliged to pay them; but, for anything besides necessities, he is not chargeable. Also, if a wife elopes, and lives with another man, the husband is not chargeable even for necessities, at least if the person who furnishes them is sufficiently apprised of her elopement. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt so far as he may have acquired property through her.

A married woman is now capable of suing and being sued, either in contract or in tort, in all respects as a feme sole. Her husband need not be joined with her as plaintiff or defendant. Any damages or costs recovered against her are payable only out of her separate estate, and if she recovers damages or costs, they belong to her alone.

In criminal prosecutions also, the wife may be indicted and punished separately; for the union is only a civil union. But in trials of any sort, they were not allowed to be evidence for or against each other; partly because it was thought impossible that their testimony could be indifferent, but principally because of the union of persons; and, therefore, if they were admitted to be witnesses for each other, they would contradict one maxim of law, "*nemo in propria causa testis esse debet*," and, if against each other, they would contradict another maxim, "*nemo tenetur seipsum accusare*." The old rules as to evidence as between husband and wife are much changed. It will be necessary to deal with them in considering the law of evidence in another part of these commentaries, and I do not propose to state them here.

A wife may have security of the peace against her husband, or, in return, a husband against his wife. The Courts of law, it was thought, would permit a husband to restrain a wife of her liberty in case of any gross misbehaviour, but this doctrine is not now held.

The statutes relating to Solemnization of Marriage are mentioned in the footnote to page 359. Those relating to the property of married women and the conveyance of the real estate of married women are not dealt with in this place.



The next and the most universal relation in nature is immediately derived from the preceding, being that between parent and child. Parent and child.

Children are of two sorts—legitimate and spurious, or bastards: each of which we shall consider in their order; and, first, of legitimate children.

1. A legitimate child is he that is born in lawful wedlock, or within a competent time afterwards. "Pater est quem nuptiæ demonstrant," is the rule of the civil law; and this holds with the civilians, whether the nuptials happen before, or after, the birth of the child. With us in England the rule is narrowed, for the nuptials must be precedent to the birth; of which more will be said when we come to consider the case of bastardy. At present let us inquire into—1. The legal duties of parents to their legitimate children. 2. Their power over them. 3. The duties of such children to their parents. Legitimate children.

1. And, first, the duties of parents to legitimate children; which principally consist in three particulars: their maintenance, their protection, and their education. Duties of Parents.

The duty of parents to provide for the maintenance of their children, is a principle of natural law; an obligation laid on them not only by nature herself, but by their own proper act, in bringing them into the world; for they would be in the highest manner injurious to their issue if they only gave their children life, that they might afterwards see them perish. By begetting them, therefore, they have entered into a voluntary obligation to endeavour, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have a perfect right of receiving maintenance from their parents. Maintenance.

Our law has made no provision to prevent the disinheriting of children by will: leaving every man's property in his own disposal, upon a principle of liberty in this, as well as every other action; though perhaps it had not been amiss if the parent had been bound to leave at the least a necessary subsistence. Indeed, among persons of any rank or fortune, a competence is generally

provided for younger children, and the bulk of the estate settled upon the eldest, by the marriage articles. Heirs also, and children, are favourites of our Courts of justice, and cannot be disinherited by any dubious or ambiguous words; there being required the utmost certainty of the testator's intentions to take away the right of an heir.

Protection

From the duty of maintenance we may easily pass to that of protection, which is also a natural duty, but rather permitted than enjoined by law, nature in this respect working so strongly as to need rather a check than a spur. A parent may, by our laws, maintain and uphold his children in their lawsuits, without being guilty of a legal crime of maintaining quarrels. A parent may also justify an assault and battery in defence of the persons of his children: nay, where a man's son was beaten by another boy, and the father went near a mile to find him, and there revenged his son's quarrel by beating the other boy, of which beating he afterwards unfortunately died; it was not held to be murder, but manslaughter merely. Such indulgence does the law show to the frailty of human nature, and the workings of parental affection.

Education

The last duty of parents to their children is that of giving them an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any. For, it is not easy to imagine or allow that a parent has conferred any considerable benefit upon his child by bringing him into the world, if he afterwards entirely neglects his culture and education, and suffers him to grow up like a mere beast, to lead a life useless to others and shameful to himself.\*

Power of  
parents.

2. The power of parents over their children is derived from the former consideration, their duty: this authority being given them, partly to enable the parent more effectually to perform his duty: and partly as a recompense for his care and trouble in the faithful discharge of it. And upon this score the municipal laws

\* See what has been said ante, page 307.

of some nations have given a much larger authority to the parents than others.

The power of a parent by the law of Ontario is moderate; but still sufficient to keep the child in order and obedience. He may lawfully correct his child, being under age, in a reasonable manner; for this is for the benefit of his education. The consent or concurrence of the parent to the marriage of his child under age was also directed by our ancient law to be obtained; and it was, as explained in considering the relation of husband and wife, absolutely necessary, for without it the contract was void; but it is now only required under the circumstances I have stated in the preceding pages. This is a means which the law has put into the parent's hands in order the better to discharge his duty; first, of protecting his children from the snares of artful and designing persons; and, next, of settling them properly in life, by preventing the ill-consequences of too early and precipitate marriages. A father has no other power over his son's estate than as his trustee or guardian; for, though he may receive the profits during his child's minority, yet he must account for them when he comes of age; but if the child have an independent fortune, he may obtain a reference to a Judge in Chambers, to see whether it be of sufficient amount to afford the child a suitable maintenance. He may indeed have the benefit of his children's labour while they live with him, and are maintained by him; but this is no more than he is entitled to from his apprentices or servants. The legal power of a father (for a mother, as such, was entitled until very lately, to no power, but only to reverence and respect), the power of a father, I say, over the persons of his children ceases at the age of twenty-one: for they are then enfranchised by arriving at years of discretion, or that point which the law has established (as some must necessarily be established) when the empire of the father, or other guardian, gives place to the empire of reason. Yet, till that age arrives, this empire of the father continues even after his death; for he may by his will appoint a

guardian to his children. He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child: who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz., that of restraint and correction, as may be necessary to answer the purpose for which he is employed. And a mother, against whom adultery has not been established, may obtain access to her infant child on application to the Court, if they shall see fit to grant it: or if such child be within seven years of age, the custody may be given to the mother until attaining that age. But the Court will deprive of the custody of their infant children, persons grossly ill-treating them, or living in gross immorality or avowed impiety, or otherwise acting in a manner injurious to the morals or interests of their children, and will appoint suitable guardians.

Duties of  
children  
to parents.

3. The duties of children to their parents arise from a principle of natural justice and retribution. For to those who gave us existence, we naturally owe subjection and obedience during our minority, and honour and reverence ever after: they who protected the weakness of our infancy are entitled to our protection in the infirmity of their age; they who by sustenance and education have enabled their offspring to prosper, ought in return to be supported by that offspring, in case they stand in need of assistance. Upon this principle proceed all the duties of children to their parents which are enjoined by positive laws.

Illegitimate  
children.

II. We are next to consider the case of illegitimate children, or bastards: with regard to whom let us inquire: 1. Who are bastards. 2. The legal duties of the parents towards a bastard child. 3. The rights and incapacities attending such bastard children.

Bastards.

1. Who are bastards. A bastard by our Ontario laws, is one that is not only begotten, but born, out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard, if the parents afterwards intermarry; and herein they differ most materially from our law; which, though not so strict as to re-

quire that the child shall be begotten, yet make it an indispensable condition, to render it legitimate, that it shall be born after lawful wedlock.

It appears, therefore, that all children born before matrimony are bastards by our law: so it is of all children born so long after the death of the husband that, by the usual course of gestation, they could not be begotten by him. But, this being a matter of some uncertainty, the law is not exact as to a few days. And this gives occasion to a proceeding at common law, where a widow is suspected to feign herself with child in order to produce a suppositious heir to the estate. In this case, with us, the heir presumptive may have a writ "*de ventre inspiciendo*," to examine whether she be with child or not; and, if she be, to keep her under proper restraint till delivered; but, if the widow be, upon due examination, found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again on the birth of a child within forty weeks from the death of a husband. But if a man dies, and his widow soon after marries again, and a child is born within such a time as that by the course of nature it might have been the child of either husband; in this case he is said to be more than ordinarily legitimate; for he may, when he arrives at years of discretion, choose which of the fathers he pleases.

A bastard may be born before the coverture or marriage state is begun, or after it is determined, so also children born during wedlock may in some circumstances be bastards. As if the husband be out of the Province of Ontario for above nine months, so no access to his wife can be presumed, her issue during that period shall be bastards. But, generally, during the coverture access of the husband shall be presumed, unless the contrary can be shown; which may, however, be proved either by showing him to be elsewhere, or that access did not take place, or was impossible: for the general rule is, "*presumitur pro legitimatione*." In a divorce "*a mensa et thoro*," if the wife breeds children, they are bastards; for the

law will presume the husband and wife conformable to the sentence of separation, unless access be proved: but, in a voluntary separation by agreement, the law will suppose access, unless the negative be shown. So, also, if there is an apparent impossibility of procreation on the part of the husband, as if he be only eight years old, or the like, there the issue of the wife shall be bastard. Likewise, in case of divorce in an Ontario Court "a vinculo matrimonii," all the issue born during the coverture are bastards; because such divorce is always upon some cause, that rendered the marriage unlawful and null from the beginning.

Duties of  
parents to  
bastard  
children.

2. Let us next see the duty of parents to their bastard children, by our law; which is principally that of maintenance. For, though bastards are not looked upon as children to any civil purposes, yet the ties of nature, of which maintenance is one, are not so easily dissolved: and they hold, indeed, as to many other intentions; as, particularly, that a man shall not marry his bastard sister or daughter.

Support of  
illegiti-  
mate  
children.

R. S. O.  
c. 138.

The method in which the law of Ontario provides maintenance for bastards is as follows: When a woman who is pregnant, or within six months after the birth of a child, does by oath before a justice of the peace charge any person as having got her with child, the father can be made liable for the maintenance of the child. The affidavit must be filed in the office of the clerk of the peace. Thereafter any person who supplies the child with necessaries may maintain an action for them against the father if the child was a minor and was not residing with the father and maintained by him. If the mother gave the order for the necessaries her evidence alone is not enough to make the father liable.

Rights  
and inca-  
pacities of  
a bastard.

3. I next proceed to the rights and incapacities which appertain to a bastard. The rights are very few, being only such as he can acquire; for he can inherit nothing, being looked upon as the son of nobody, and sometimes called "filius nullius," sometimes "filius populi." Yet he may gain a surname by reputation, though he has none by inheritance.

The incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs, but of his own body; for, being "nullius filius," he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived. A bastard was also, in strictness, incapable of holy orders: and, though that were dispensed with, yet he was utterly disqualified from holding any dignity in the Church; but this doctrine seems now obsolete; and in all other respects, there is no distinction between a bastard and another man. And really any other distinction but that of not inheriting, which civil policy renders necessary, would, with regard to the innocent offspring of his parents' crimes, be odious, unjust, and cruel to the last degree: and yet the civil law, so boasted of for its equitable decisions, made bastards in some cases incapable even of a gift from their parents. A bastard may, lastly, be made legitimate, and capable of inheriting, by the transcendent power of an Act of Parliament, and not otherwise: as was done in the case of John of Gaunt's bastard children by a statute of Richard the Second.

The only general private relation now remaining to be discussed is that of guardian and ward; which bears a very near resemblance to the last, and is plainly derived out of it: the guardian being only a temporary parent, that is, for so long a time as the ward is an infant, or under age. In examining this species of relationship, I shall first consider the different kinds of guardians, how they are appointed, and their power and duty; next, the different ages of persons, as defined by the law; and lastly, the privileges and disabilities of an infant, or one under age and subject to guardianship.

1. The guardian, with us, performs the office both of the tutor and curator of the Roman laws; the former of which had the charge of the maintenance and education of the minor, the latter the care of his fortune; or, according to the language of the Court, the tutor was the committee of the person, the curator the committee of the estate. But this office was frequently united in the civil law; as it is always in our law with

Guardian  
and ward.

Guardian  
is both  
tutor and  
curator.



regard to minors, though as to lunatics and idiots it is often kept distinct.

Guardians  
are: 1. By  
nature.

Of the several species of guardians, the first are guardians by nature: viz., the father and (in some cases) the mother of the child. For if an estate be left to an infant, the father is by common law the guardian, and must account to his child for the profits. And, with

4 & 5 Ph.  
& Mar.  
c. 8.

regard to daughters, it seems, by the construction of the statute 4 & 5 Ph. & Mar. c. 8, that the father might by deed or will assign a guardian to any woman-child under the age of sixteen; and, if none be so assigned, the mother shall in this case be guardian. There are also guardians for nurture; which are, of course, the father or mother, till the infant attains the age of fourteen years; and in default of father or mother, the Court usually assigns some discreet person to take care of the infant's personal estate, and to provide for his maintenance and education, although his power to do so has been questioned. Next are the guardians

2. For  
nurture.

3. In so-  
cage.

"in socage," who are also called guardians by the common law. These take place only when the minor is entitled to some estate in lands, and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend; as, where the estate descended from his father, in this case his uncle by the mother's side cannot possibly inherit this estate, and therefore shall be the guardian. For the law adjudges it improper to trust the person of an infant in his hands, who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust. These guardians in socage, like those for nurture, continue only till the minor is fourteen years of age; for then, in both cases, he is presumed to have discretion, so far as to choose his own guardian. This he may do, unless one be appointed by the father, by virtue of the statute 12 Car.

12 Car. II.  
c. 24.

II., c. 24, which, considering the imbecility of judgment in children of the age of fourteen, and the abolition of guardianship in chivalry (which lasted till the age of twenty-one, and of such we shall speak hereafter) enacts that any father, under age or of full age, may by deed

or will dispose of the custody of his child, either born or unborn, to any person, except a Popish recusant, either in possession or reversion, till such child attains the age of one and twenty years. These are called <sup>4. By statute</sup> guardians by statute, or testamentary guardians. The guardianship by socage is practically superseded by that of the official guardian, who is an officer of the High Court of Justice, and of guardians appointed by the Surrogate Court and by the High Court. These appointments are made with respect to the custody of infants, but the jurisdiction is not usually exercised in cases where the infant has no property.

Male infants not under the age of fourteen, and female infants not under the age of twelve, by their own consent, and under those ages, without their own consent, may be put under guardianship.\* This right may be exercised by any parent or guardian, or any charitable society authorized by the Lieutenant-Governor to exercise such power. The person to whom the minor is transferred must be some respectable, trustworthy person who is willing to assume, and who in writing does assume, the duty of a parent towards the child; this person, then, thereupon possesses the same authority over the child as if he were its parent, and is bound to perform the duties of a parent towards the infant.

The power and reciprocal duty of a guardian and ward are the same, pro tempore, as that of a father and child; and therefore I shall not repeat them: but shall only add, that the guardian, when the ward comes of age, is bound to give him an account of all that he has transacted on his behalf, and must answer for all losses by his wilful default or negligence. In order, therefore, to prevent disagreeable contests with young gentlemen, it has become a practice for many guardians, of large estates especially, to indemnify themselves by applying to the High Court of Justice, acting under its direction, and accounting annually before the officers of that Court. For the High Court is, by right derived from the Crown, the general and supreme guardian of

Account-  
ing by  
guardians.

\* See also page 339, ante.

all infants, as well as idiots and lunatics; that is, of all such persons as have not discretion enough to manage their own concerns. In case, therefore, any guardian abuses his trust, the Court will check and punish him; nay, sometimes will proceed to the removal of him, and appoint another in his stead.

Who is  
under age.

2. Let us next consider the ward or person within age, for whose assistance and support these guardians are constituted by law; or who it is that is said to be within age. The ages of male and female are different for different purposes. A male at twelve years old may take the oath of allegiance; at fourteen is at years of discretion, and therefore may consent or disagree to marriage, may choose his guardian. No will of any person under twenty-one is valid; but at seventeen he may be an executor; and at twenty-one is at his own disposal, and may alien his lands, goods and chattels. A female also at seven years of age may be betrothed or given in marriage; at nine is entitled to dower; at twelve is at years of maturity, and therefore may consent or disagree to marriage; at fourteen, however, she is at years of legal discretion, and may choose a guardian; at seventeen may be executrix; and at twenty-one may dispose of herself and her lands. So that full age in male or female is twenty-one years, which age is completed on the day preceding the anniversary of a person's birth; who till that time is an infant, and so styled in law.

Privileges  
and dis-  
abilities of  
Infants.

3. Infants have various privileges, and various disabilities: but their very disabilities are privileges: in order to secure them from hurting themselves by their own improvident acts. An infant, when sued, appears to defend his cause by guardian; for he is to defend him against all attacks as well by law as otherwise: but he may sue either by his guardian or "prochein amy" his next friend who is not his guardian. But an infant may prosecute in the Division Courts any suit for wages for any sum not exceeding \$100, as if of full age. The "prochein amy" may be any person who will undertake the infant's cause; and it frequently happens that an infant,

by his "prochein amy," institutes a suit against a fraudulent guardian.

With regard to estates and civil property, an infant has many privileges, and this may be said in general, that an infant may lose nothing by non-claim, or neglect of demanding his right; nor shall any other "laches" or negligence be imputed to an infant, except in some very particular cases.

It is generally true that an infant can neither aliene his lands nor do any legal act, nor make a deed, nor indeed any manner of contract, that will bind him. But still to all these rules there are some exceptions: part of which were just now mentioned in reckoning up the different capacities which they assume at different ages; and there are others, a few of which it may not be improper to recite as a general specimen of the whole. And, first, it is true that infants cannot aliene their estates: but infant trustees, or mortgagees, are enabled to convey, under the direction of the Court, the estates they hold in trust or mortgage to such person as the Court shall appoint. Also it is generally true, that an infant can do no legal act. An infant may purchase lands, but his purchase is incomplete: for, when he comes to age he may either agree or disagree to it, as he thinks prudent or proper, without alleging any reason; and so may his heirs after him, if he dies without having completed his agreement. And generally all contracts held by the Court to be to the prejudice of the infant are void; those for his benefit are valid; while those of an intermediate kind the Court would probably hold to be voidable at his election. It is, farther, generally true that an infant under twenty-one can make no deed but what is afterwards voidable: yet in some cases he may bind himself apprentice by deed indented or indentures for seven years; and he may by deed or writing appoint a guardian to his children, if he has any. Also, it is generally true that an infant can make no other contract that will bind him; yet he may bind himself to pay for his necessary meat, drink, apparel, physic, and such other necessities;

Powers of  
Infants in  
law.

and likewise for his good teaching and instruction, whereby he may profit himself afterwards. Finally, no action can be maintained to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless the promise or ratification is made by some writing by the person to be charged, or by his agent duly authorized.

R. S. O.  
c. 123, s. 6.

**Custody of Infants.** The custody of infants is now regulated by statute as follows:

R. S. C.  
c. 137.

The High or Surrogate Court may, upon the application of the mother of an infant, make an order regarding the custody of the infant and the right of access of either parent. In making this order the Court refers to the welfare of the infant and considers the conduct of the parent, and the wishes as well of the mother as of the father. The order may be afterwards altered, varied or discharged on the application of either parent or of any guardian. The order may provide for the maintenance of the infant by payment by the father or by payment out of any estate to which the infant is entitled, taking into consideration the pecuniary circumstances of the father or the value of the estate. No order can be made in favor of a mother against whom adultery has been established by judgment in an action for criminal conversation at the suit of her husband against any person. On the death of the father of an infant, the mother, if surviving, becomes its guardian, either alone when no other guardian has been appointed by the father, or jointly with any guardian whom the father may have appointed. The mother of an infant may, by deed or will, appoint any person to be guardian of such child after the death of herself and the father of the infant, if the infant be then unmarried. Where guardians are appointed by both parents they must act jointly. In the event of guardians being unable to agree among themselves, or with the father upon a question affecting the welfare of an infant, the Court will make such order regarding the matter in difference as

may be necessary. Testamentary guardians are removable for the same causes as other guardians and trustees. The Surrogate Court for the county within which an infant resides may appoint the father of the infant to be guardian, or, with the consent of the father, may appoint some other suitable person. If the infant is over fourteen years of age, no appointment can be made without his consent. If the infant has no father living, or any local guardian authorized by law to take the care of his person and the charge of his estate, then the Court may appoint a guardian. From every guardian appointed by the Court a bond is taken for the faithful performance of the trust; the amount of the penal sum and the securities must be approved of by the Judge. Guardians when appointed have authority to act for and on behalf of their ward; they may appear in any Court and prosecute or defend any action in the infant's name; they have the charge and management of the infant's estate, real and personal, and the care of his person and education. As has been seen, in considering the subject of apprentices, guardians have also the right of apprenticing minors.\*

Where an infant is seized or possessed of any real estate, and it is made to appear to the High Court of Justice that a sale, lease, or other disposition of this estate, or of some part of it, is necessary or proper for the maintenance or education of the infant, or that by reason of any part of the property being exposed to waste and dilapidation or depreciation, the infant's interest requires it, a sale or lease may be ordered. No sale or any other disposition can be made against the provisions of the will or deed by which the estate has been devised or granted to the infant. When the infant is over fourteen years of age his consent is necessary. Moneys arising from any sale are applied and disposed of as the Court directs. If any real estate of an infant is subject to dower, and a doweress consents in writing to accept in lieu of dower any gross sum which the Court thinks reasonable, or the permanent investment of a reasonable sum, in such a way that the

Sales of  
Infants'  
real estate.

\* See page 839, ante.

interest of the amount shall be made payable to the doweress during her life, the Court or Judge may direct the payment of the amount upon the proofs applicable to life annuities. The Court may direct the payment to the doweress of an annual sum, or of the income or interest to be derived from the purchase money, and for that purpose may order the investment of so much of the purchase money of the property as may be required.

56 Vict.  
c. 45.

I ought not to close this section without a brief reference to the law relating to the prevention of cruelty and better protection of children. This new branch of jurisprudence is only in its initiatory stages, but already the results are satisfactory. Unworthy parents may be deprived of their children and foster homes may be sought out and the children may be sent there by order of a police magistrate or any two justices of the peace. Children's aid societies in a municipality, when formed, are given extensive powers of interference. Great hopes are entertained that this long-felt want is at last in the way of being supplied.

And thus much, at present, for the privileges and disabilities of infants.

*Statutes relating to Parent and Child.*

PAGE.

- 369..Infants—R. S. O. c. 137; 1802 c. 20; 1895 c. 13.  
 372..Support of Illegitimate Children—R. S. O. c. 138.  
 375..Official Guardian—58 Vict. c. 12, sec. 159  
 378—Ratification—R. S. O. c. 123, s. 6.  
 380—Prevention of Cruelty to Children—1893 c. 45; 1895 c. 52.
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## CHAPTER I.—(Continued).

### SECTION 4.

#### ARTIFICIAL PERSONS—CORPORATIONS AND COMPANIES

##### ARTIFICIAL PERSONS, "CORPORATIONS."

###### Sorts of Corporations.

*Aggregate and sole.*

*Ecclesiastical and lay.*

*Lay corporations are.*

*Civil and eleemosynary.*

##### INCIDENTS OF CORPORATIONS.

###### I. How corporations may be created.

Royal consent necessary.

By Act of Parliament.

By Charter — Letters Patent.

Must have names.

###### II. Powers, capacities and incapacities of corporations.

###### III. How corporations are visited.

###### IV. How corporations may be dissolved.

Formation, powers and winding-up of Joint Stock Companies under Ontario Legislation.

Formation, powers and winding-up of Joint Stock Companies under Dominion Legislation.

Banks.

Insurance Companies.

Building Societies.

Railway Companies.

We have hitherto considered persons in their natural capacities, and have treated of their rights and duties. But, as all personal rights die with the person, and, as the necessary forms for investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable; it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality. These artificial persons are called bodies politic, bodies corporate (corpora corporata), or corporations: of which there is a great variety subsisting, for the advancement of religion, of learning, and of commerce; in order to preserve entire and forever those rights and immunities, which if they were granted only to those individuals of which the body corporate is composed, would upon their death be utterly lost and extinct.

Before we proceed to treat of the several incidents of corporations, as regarded by the laws of Ontario, let us first take a view of the several sorts of them; and then we shall be better enabled to apprehend their respective qualities.

The first division of corporations is into aggregate and sole. Corporations aggregate consist of many persons, united together into one society, and are kept up by a perpetual succession of members, so as to continue forever; of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church. Corporations sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the King is a sole corporation, and the Governor-General of Canada and the Lieutenant-Governor of Ontario are each of them a sole corporation.

Another division of incorporations, either sole or aggregate, is into ecclesiastical and lay. Ecclesiastical corporations are where the members that compose it are entirely spiritual persons; such as bishops; certain deans and prebendaries; all archdeacons, parsons and vicars; which are sole corporations: deans and chapters at present, and formerly prior and convent, abbot and monks, and the like bodies aggregate. These are erected for the furtherance of religion, and perpetuating the rights of the church. Lay corporations are of two sorts, civil and eleemosynary. The civil are such as are erected for a variety of temporal purposes. The King, for instance, is made a corporation to prevent in general the possibility of an interregnum or vacancy of the throne, and to preserve the possessions of the Crown entire; for, immediately upon the demise of one king his successor is in full possession of the regal rights and dignity. Other lay corporations are erected for the good government of a town, or particular district, as a mayor and commonalty, bailiff and burgesses, or the like, usually called municipal corporations: some for

the advancement and regulation of manufactures and commerce; as the trading companies of towns: and some for the better carrying on of divers special purposes; as public school trustees or boards, for conservation of the property of the school section; the College of Physicians and Surgeons, for the improvement of medical science; the Royal Society of Canada, for the advancement of general knowledge; and the various societies established for promoting the study of antiquities. The eleemosynary sort are such as are constituted for the perpetual distribution of the free alms, or bounty, of the founder of them to such persons as he has directed. Of this kind are all hospitals for the maintenance of the poor, sick and impotent; and all colleges, both in our universities and out of them: which colleges are founded for two purposes: 1. For the promotion of piety and learning by proper regulations and ordinances. 2. For imparting assistance to the members of those bodies, in order to enable them to prosecute their devotion and studies with greater ease and assiduity. And all these eleemosynary corporations are, strictly speaking, lay and not ecclesiastical, even though composed of ecclesiastical persons, and although they in some things partake of the nature, privileges, and restrictions of ecclesiastical bodies.

Having thus marshalled the several species of corporations, let us next proceed to consider: 1. How corporations, in general, may be created. 2. What are their powers, capacities, and incapacities. 3. How corporations are visited; and 4. How they may be dissolved.

The King's consent is absolutely necessary to the erection of any corporation, either impliedly or expressly given. The King's implied consent is to be found in corporations which exist by force of the common law, to which our former Kings are supposed to give their concurrence; common law being nothing else but custom, arising from the universal agreement of the whole community. Of this sort are the King himself, all bishops, parsons, vicars, churchwardens, and some

others; who by common law have ever been held (as far as our books can show us) to have been corporations *virtute officii*: and this corporation is so inseparably annexed to their offices that we cannot frame a complete legal idea of any of these persons, but we must also have an idea of a corporation, capable to transmit his rights to his successors, at the same time. The methods by which the King's consent is expressly given are either by Act of Parliament or charter. By Act of Parliament, of which the royal assent is a necessary ingredient, corporations may undoubtedly be created; but it is observable that (till of late years) most of those statutes, which are usually cited as having created corporations, do either confirm such as have been before created by the King; or, they permit the King to erect a corporation in futuro with such and such powers; as in the case of the Bank of England, and the Society of the British Fishery. So that the immediate creative Act was usually performed by the King alone, in virtue of the royal prerogative. With the decline of prerogative power the ordinary method of creating corporations has been that of creation by the legislative branches of the government.

And all the other methods, therefore, whereby corporations exist, by common law, by prescription, and by an Act of Parliament, were for the most part reducible to this of the King's letters patent, or charter of incorporation. The King's creation may be performed by the words "*creamus, erigimus, fundamus, incorporamus,*" or the like. Nay, it is held, that if the King grants to a set of men to have "*gildam mercatoriam,*" a mercantile meeting or assembly, this is alone sufficient to incorporate and establish them forever.

The Parliament, we observe, by its absolute and transcendent authority, may perform the act of incorporation, or any other act whatsoever: and now actually does perform it to a great extent. The King may in theory prevent it when he pleases, by refusing his assent to the bill, but such a course is not likely to be taken in our times.

The King (it is said) may grant to a subject the power of erecting corporations, though the contrary was formerly held: that is, he may permit the subject to name the persons and powers of the corporation at his pleasure; but it is really the King that erects, and the subject is but the instrument; for though none but the King can make a corporation, yet "qui facit per alium, facit per se."

When a corporation is erected, a name must be given to it; and by that name alone it must sue, and be sued, and do all legal acts; though a very minute variation therein is not material. Such name is the very being of its constitution; and, though it is the will of the King that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. The name of incorporation, says Sir Edward Coke, is as a proper name, or name of baptism; and therefore, when a private founder gives his college or hospital a name, he does it only as a godfather; and by that same name the King baptizes the incorporation. Corporate names.

II. After a corporation is so formed and named, it acquires many powers, rights, capacities and incapacities, which we are next to consider. Some of these are necessarily and inseparably incident to every corporation, which incidents, as soon as a corporation is duly elected, are tacitly annexed, of course. As, 1. To have perpetual succession. This is the very end of its incorporation: for there cannot be a succession forever without an incorporation; and therefore all aggregate corporations have a power necessarily implied of electing members in the room of such as go off. 2. To sue or be sued, implead or be impleaded, grant or receive, by its corporate name, and do all other acts as natural persons may. 3. To purchase lands, and hold them, for the benefit of themselves and their successors, which two are consequential to the former. 4. To have a common seal. For a corporation, being an invisible body, cannot manifest its intentions by any Powers, capacities and incapacities.

personal act or oral discourse; it therefore acts and speaks only by its common seal. For, though the particular members may express their private consents to any act, by words, or signing their names, yet this does not bind the corporation: it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole. 5. To make by-laws, or private statutes, for the better government of the corporation; which are binding upon themselves, unless contrary to the laws of the land, and then they are void. This is also included by law in the very act to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic. These five powers are inseparably incident to every corporation, at least to every corporation aggregate, for two of them, though they may be practised, yet are very unnecessary to a corporation sole, viz., to have a corporate seal to testify his sole assent, and to make statutes for the regulation of his own conduct.

Privileges and disabilities which peculiarly attend an aggregate corporation.

There are also certain privileges and disabilities that attend an aggregate corporation, and are not applicable to such as are sole; the reason of them ceasing, and of course the law. It must always appear by attorney; for it cannot appear in person, being invisible, and existing only in intendment and consideration of law. It can neither maintain, nor be made defendant to, an action of battery or such like personal injuries; for a corporation can neither beat, nor be beaten, in its body politic. A corporation cannot commit treason, or felony, or other crime, in its corporate capacity: though its members may, in their distinct individual capacities. Neither is it capable of suffering a traitor's or felon's punishment, for it is not liable to corporal penalties, nor to attainder, forfeiture, or corruption of blood. It cannot be executor or administrator, or perform any personal duties; for it cannot take an oath for the due execution of the office. It cannot be seised of lands to the use of another; for such kind of confidence is foreign to the end of its institution. Neither can it be

committed to prison; for its existence being ideal, no man can apprehend or arrest it. And therefore also it cannot be outlawed: for outlawry always supposes a precedent right of arresting, which has been defeated by the parties absconding, and that also a corporation cannot do: for which reason the proceedings to compel a corporation to appear to any suit by attorney are always by distress on their lands or goods. Neither can a corporation be excommunicated; for it has no soul, as is gravely observed by Sir Edward Coke: and therefore also it is not liable to be summoned into the ecclesiastical courts upon any account; for those courts act only *pro salute animæ*, and their sentences can only be enforced by spiritual censures: a consideration, which, carried to its full extent, would alone demonstrate the impropriety of these courts interfering in any temporal rights whatsoever.

There are also other incidents and powers, which belong to some sort of corporations, and not to others. An aggregate corporation may take goods and chattels for the benefit of themselves and their successors, but a sole corporation cannot: for such movable property is liable to be lost or embezzled, and would raise a multitude of disputes between the successor and executor; which the law is careful to avoid. In ecclesiastical and eleemosynary foundations, the King or the founder may give them rules, laws, statutes, and ordinances, which they are bound to observe: but corporations merely lay, constituted for civil purposes, are subject to no particular statutes; but to the common law, and to their own by-laws, not contrary to the laws of the realm. Aggregate corporations also, that have by their constitution a head, as a dean, warden, master, or the like, cannot do any acts during the vacancy of the headship; except only appointing another: neither are they then capable of receiving a grant; for such corporation is incomplete without a head. In aggregate corporations also, the act of the major part is esteemed the act of the whole. By the civil law this major part must have consisted of two-thirds of the whole, else no act could be performed: which perhaps may be one reason why they required

Incidents  
and  
powers  
which be-  
long to  
some cor-  
porations.



three at least to make a corporation. But, with us, any majority is sufficient to determine the act of the whole body.

How far a corporation can purchase land.

34 Hen. VIII. c. 8.

We before observed that it was incident to every corporation to have a capacity to purchase lands for themselves and successors: and this is regularly true at the common law. But they are excepted out of the statute of wills: so that no devise of lands to a corporation by will is good:\* except for charitable uses, by statute 43 Eliz. c. 4: which exception is again greatly narrowed by the statute 9 Geo. II. c. 36. And also, by a great variety of statutes, their privilege even of purchasing from any living grantor is much abridged: so that now a corporation, either ecclesiastical or lay, must have a statutory authority or charter right to purchase before they can exert that capacity which is vested in them by the common law: nor is even this in all cases

Statutes of mortmain.

sufficient. These statutes are generally called the statutes of mortmain; all purchases made by corporate bodies being said to be purchased in mortmain, in mortua manu: for the reason of which appellation Sir Edward Coke offers many conjectures; but there is one which seems more probable than any that he has given us: viz., that these purchases being usually made by ecclesiastical bodies, the members of which (being professed) were reckoned dead persons in law, land, therefore, holden by them might with great propriety be said to be held in mortua manu.

The duties of a corporation.

The general duties of all bodies politic, considered in their corporate capacity, may, like those of natural persons, be reduced to this single one; that of acting up to the end or design, whatever it be, for which they were created by their founder.

III. How a corporation may be visited.

III. I proceed therefore next to inquire, how these corporations may be visited. For corporations being composed of individuals, subject to human frailties, are liable, as well as private persons, to deviate from the end of their institution. And for that reason the law has provided proper persons to visit, inquire into, and

\* This statement is not now correct. See 55 Vict. c. 21 (Ont.), *The Mortmain and Charitable Uses Act, 1892.*

correct all irregularities that arise in such corporations, either sole or aggregate. With respect to all lay corporations, the founder, his heirs, or assigns, are the visitors, whether the foundation be civil or eleemosynary.

I know it is generally said, that civil corporations are subject to no visitation, but merely to the common law of the land; and this shall be presently explained. But first, as I have laid it down as a rule that the founder, his heirs, or assigns, are the visitors of all lay corporations, let us inquire what is meant by the founder. The founder of all corporations, in the strictest and original sense, is the King alone, for he only can incorporate a society; and in civil incorporations, such as mayor and commonalty, etc., where there are no possessions or endowments given to the body, there is no other founder but the King. And, in general, the King being the sole founder of all civil corporations, and the endower the perficient founder of all eleemosynary ones, the right of visitation of the former results, according to the rule laid down, to the King; and of the latter to the patron or endower.

As to civil corporations in this respect.

The King being thus constituted by law visitor of all civil corporations, the law has also appointed the place wherein he shall exercise this jurisdiction; which is the High Court of Justice; where, and where only, all misbehaviours of this kind of corporations are inquired into and redressed, and all their controversies decided. And this is what I understand by the meaning of our lawyers, when they say that these civil corporations are liable to no visitation; that is, that the law having by immemorial usage appointed them to be visited and inspected by the King their founder, in his Majesty's Court, according to the rules of the common law, they ought not to be visited elsewhere, or by any other authority.

The jurisdiction as to which is vested in the Court.

As to eleemosynary corporations, by the dotation the founder and his heirs are of common right the legal visitors, to see that such property is rightly employed, as might otherwise have descended to the visitor himself: but, if the founder has appointed and assigned

Who is the visitor of an eleemosynary corporation.

any other person to be visitor, then his assignee so appointed is invested with all the founder's power, in exclusion of his heir. Eleemosynary corporations are chiefly hospitals, or colleges in the universities. In Ontario the visitor is generally named in the charter or Act of incorporation. The Lieutenant-Governor is the visitor of the University of Toronto and Upper Canada College.

IV. How  
corpora-  
tions may  
be dis-  
solved.

IV. We come now, in the last place, to consider how corporations may be dissolved. Any particular member may be disfranchised, or lose his place in the corporation, by acting contrary to the laws of the society, or the laws of the land: or he may resign it by his own voluntary act. But the body politic may also itself be dissolved in several ways; which dissolution is the civil death of the corporation: and in this case their lands and tenements shall revert to the person, or his heirs, who granted them to the corporation: for the law annexes a condition to every such grant, that if the corporation be dissolved, the grantor shall have the lands again, because the cause of the grant fails. The grant is indeed only during the life of the corporation; which may endure for ever: but, when that life is determined by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life. The debts of a corporation, either to or from it, are totally extinguished by its dissolution; so that the members thereof cannot recover, or be charged with them, in their natural capacities.

A corporation may be dissolved: 1. By Act of Parliament, which is boundless in its operations. 2. By the natural death of all its members, in case of an aggregate corporation. 3. By surrender of its franchise into the hands of the King, which is a kind of suicide. 4. By forfeiture of its charter, through negligence or abuse of its franchise, in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the incorporation is void. And the regular course is to bring an information in nature of a writ of quo warranto, to inquire by what warrant the members now exercise their corporate

power, having forfeited it by such and such proceedings. The exertion of this act of law, for the purposes of the state, in the reign of King Charles and King James the Second, particularly by seizing the charter of the city of London, gave great and just offence: though, perhaps, in strictness of law, the proceedings in most were sufficiently regular: but the judgment against that of London was reversed by Act of Parliament after the Revolution: and by the same statute it is enacted that the franchise of the city of London shall never more be forfeited for any cause whatsoever. And, because by the common law corporations were dissolved, in case the mayor or head officer was not duly elected on the day appointed in the charter, or established by prescription, it is now provided, in England, that, for the future, no corporation shall be dissolved upon that account; and ample directions are given for appointing a new officer, in case there be no election, or a void one, made upon the prescriptive or charter day.

Having thus dealt with the general incidents of all corporations, we are now able to turn to our own legislation on the subject of the incorporation, the powers, and the winding up of companies. There are, then, to be considered the requirements demanded for the protection of the public before individuals are allowed to form banking corporations, insurance associations, building societies or railway companies. When we have examined these matters we shall have completed our survey of the law relating to artificial persons, and shall have reached the end of our examination of the rights of persons. In Blackstone's day the law of joint stock companies was in its infancy. A company with the liability to the public of its members limited to the extent of their interest in its capital was unknown until 1847. The revolution in commercial methods effected by this innovation has been far-reaching. It may be said to have completely altered methods of trading on

a large scale.\* No person can now be said to understand commercial law who is not conversant with the law of joint stock companies and limited liability. Hence the necessity for an examination of that subject.

Joint  
stock com-  
pany legis-  
lation.

Companies may be incorporated by the Province of Ontario for the purposes mentioned as coming within the provincial jurisdiction in the British North America Act; they may be incorporated by the Dominion for purposes coming within the Dominion jurisdiction as set out in that Act. Both the Province and Dominion have passed Acts making certain general provisions applicable to companies formed within their respective jurisdiction. The mode of formation of a company is also prescribed by both legislatures. We will consider first the provincial legislation and then that of the Dominion.

Provincial  
incorpora-  
tion.

R. S. O.  
c. 156.

A special provincial Act of incorporation may be obtained by any company. If obtained, all powers given by the special Act are subject to the provisions and restrictions of the general Act.

The general Act contains the following provisions, which are applicable to companies subject to the legislative authority of the province, incorporated for any of the following purposes:

1. The carrying on of any kind of manufacturing, shipbuilding, mining, mechanical or chemical business.
2. The erection and maintenance of any building to be used as a mechanics' institute or public reading or lecture room, or fair-ground, or for educational, literary, scientific, or religious purposes; or as a public hotel, or as a place for baths and bath-houses.
3. The opening and using of salt or mineral springs.

\* It is stated in a memorandum issued by the Ontario Government that between 1874 and 1896 more than two thousand companies were incorporated under the Ontario Joint Stock Companies Letters Patent Act. In 1895 one hundred and seventy-four provincial charters were granted to companies with a nominal capital of \$11,000,000.

4. The carrying on of any fishery or fisheries in the province or the waters adjacent to it, and the building and equipping of vessels required for that purpose.

5. The carrying on of any general forwarding business, and the construction, owning, chartering or leasing of ships, steamboats or other property for the purpose of that business.

6. The supplying of any place with gas or water, or with both.

7. The constructing of any lines of telegraph.

8. The acquiring of works for the transmission of timber.

9. For acquiring or constructing and maintaining any roads, bridges, piers, wharves, dry-docks or marine railways.

First, of the directors.

There must be not less than three nor more than Directors. nine directors. No person can be a director unless he is a shareholder owning stock absolutely in his own right, and not in arrear in respect of any call. The majority of the directors must be at all times persons resident in Ontario and British subjects. Directors are elected by the shareholders as prescribed by the by-laws. If, at any time, no election is held, the company is not thereby dissolved, but the election may take place at any general meeting of the company duly called for the purpose, and the retiring directors continuing office until their successors are elected. The directors have full power to administer the affairs of the company, and make or cause to be made for the company any description of contract which the company by law may enter into. They have power to make by-laws relative to the stock of the company, to dividends on that stock, to fix the number of directors, to settle the appointment and government of the officers of the company, to appoint the annual meeting of the company, the procedure at all company meetings, the imposition of penalties, and for the conduct of all the affairs of the company. These by-laws must be confirmed at a general meeting of the

company duly called for the purpose; in default of confirmation at that meeting they cease from that time to have force. The directors are jointly and severally liable to the servants of the company for all debts not exceeding one year's wages for service performed to the company while they are directors. No director is liable unless the company or the director has been sued within one year after the debt was accrued, nor before an execution against the company has been returned unsatisfied in whole or in part; in the latter case the amount due on the execution is the amount recoverable with costs against the directors. If directors pay any dividends when the company is insolvent, or which render the company insolvent, or diminish its capital stock, they are jointly and severally liable as well to the company as to the shareholders and creditors for all the debts of the company then existing and thereafter contracted during their continuance in office. Any director may exonerate himself from liability by protesting against the dividend; he must do so within twenty-four hours after he has become aware of it, and must enter on the minutes of the board of directors his protest; he must within eight days afterwards publish his protest in some newspaper. No loan can be made by the company to any shareholder; if made, all directors and officers of the company making the loan or assenting to it are jointly and severally liable to the company for the amount of it. Where a prospectus or notice invites persons to subscribe or apply for shares, debentures, stock, annuities, on lives or other security of a company, every person who is a director of the company at the time of the issue of the prospectus, or who, with his authority, is named as a director, or who is about to become a director, and every person who has authorized the issue of a prospectus or notice, is liable to pay to all persons subscribing or applying on the faith of the prospectus compensation for any loss or damage they may have sustained by reason of any untrue statements. If the prospectus is founded on reports or valuations of experts, then there will be liability to pay compensation if it be proved that the

Fraudulent prospectus.

54 Vict.  
c. 34.

56 Vict.  
c. 33.



director had no reasonable ground to believe that the person who made the statement, report or valuation was competent to make it. If the defendant can prove that he withdrew his consent, or that the prospectus or notice was issued without his authority, or if he gave reasonable public notice of his dissent, he may be relieved from liability. If a prospectus or notice contains names which are improperly inserted, the persons who have issued the prospectus are liable in damages to any person injured.

2. Stock. The stock of the company is personal Stock. estate, and is transferable as may be prescribed by the by-laws of the company. The directors may call upon the shareholders for payment of their stock as may be necessary; not less than ten per cent. must be called in and made payable within one year from the incorporation of the company, the remainder as required by by-law. Actions may be brought against shareholders in default, if any call has been made on any share and is not duly paid; the directors may forfeit any shares, when forfeited they become the property of the company. No share can be transferred until all previous calls have been duly paid, or until declared forfeited for non-payment of calls. No shareholder who is in arrear in respect of any call can vote at any meeting of the company.

3. Books of the company. The company is bound to Company's books. keep proper stock books; if not kept and allowed to be open for inspection by shareholders and creditors of the company the corporate rights of the company are forfeited. The company is not bound to seek the execution of any trust in respect of any shares. The receipt of a shareholder in whose name the stock stands in the books of the company is a good discharge to the company for any dividends or money payable in respect of the shares; the shareholders are not, as such, responsible for any default or liability whatsoever of the company beyond the unpaid amount of their share in the capital stock. Trustees, executors, administrators or guardians are not personally subject to liability as shareholders, but the estates in their hands are

liable. Trustees and executors may vote on the stock held by them in trust. A person who pledges his stock may nevertheless vote as a shareholder.

If the persons who desire to form a company do not wish to apply for a special Act they may obtain incorporation by letters patent. This method of incorporation is provided for as follows:

Incorporation by  
Letters  
Patent.

R. S. O.  
c. 157.

The Lieutenant-Governor in Council may, by letters patent under the Great Seal of the province, grant a charter to any number of persons, not less than five, who petition for it. Thereby these persons and any others who may become shareholders in the company are constituted a body corporate and politic for all purposes to which the legislative authority of the Legislature of Ontario extends, except construction and erection of railways and all business of insurance, other than insurance companies specially formed, to which I shall hereafter allude. The name of the Province of Ontario or of some locality in it must constitute part of the name of every company incorporated. The applicants must give notice in the Ontario Gazette and petition the Lieutenant-Governor through the Provincial Secretary for the issue of the letters patent. Before letters patent are issued the applicants must establish to the satisfaction of the Provincial Secretary or other officer the sufficiency of their notice of petition, and that the proposed name is not the name of any other incorporated or unincorporated company. When granted, notice of the letters must be given by the Provincial Secretary in the Ontario Gazette; from that date the persons therein named and their successors are a body corporate and politic by the name given to them. When incorporated, every company may acquire, hold, alienate and convey real estate, subject to any restrictions or conditions set out in the letters patent. It becomes invested with all representatives, real and personal, held by or for the company under a trust created with a view to its incorporation. It has all the powers, privileges and immunities requisite to the carrying on

of its undertaking, as if the company had been incorporated by a special Act of the Legislature.

At any time after nine-tenths of the capital stock of the company has been taken up and ten per cent. paid, any of the directors of the company may make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company. They may if they see fit decrease the capital stock. No by-law for increasing or decreasing the capital stock can have any force until after it has been sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting of the company, called for considering the matter, and afterwards confirmed by supplementary letters patent. These supplementary letters patent must be petitioned for at any time not more than six months after the passing of the by-law. On a report by the Provincial Secretary approving of the granting of the petition the Lieutenant-Governor in Council grants supplementary letters patent under the Great Seal and notice is given in the Ontario Gazette. The directors may make a by-law for creating and issuing any part of the capital stock preference stock, giving this latter stock such preference and priority as respects dividends and otherwise over ordinary stock as may be declared by by-law. The by-law may provide that the holders of these preference shares can have the right to select a certain stated proportion of the board of directors, or may give them such control over the affairs of the company as may be considered desirable. The shareholders must sanction the issue of this stock at a meeting called for the purpose. If a resolution is passed by a vote of not less than two-thirds in value of the shareholders, authorizing an application to the Lieutenant-Governor, supplementary letters patent may also be issued for extending the powers of the company limiting or increasing the borrowing power of the company, providing for the formation of a reserve fund, or other matters for which provision might have been made by the original letters patent.

Supple-  
mentary  
Letters  
Patent.

Provisional directors.

The affairs of a company so organized must be managed by a board of not less than three directors, who must be shareholders owning stock absolutely in their own right and not in arrear in respect of any call. The persons named in the letters patent are called provisional directors, and hold office until replaced by others appointed in their stead. Directors are elected for any term not exceeding two years by ballot; they elect from among themselves a president, and name and remove at pleasure the officers of the company. The directors administer the affairs of the company, and may make for the company any description of contract which the company may by law enter into. Their by-laws must be submitted to the company at its general meeting; in default of confirmation at that meeting they cease to have force. If a by-law is sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting duly called for the purpose, the directors may borrow money on the credit of the company; for this purpose they may issue the bonds, shares or other securities of the company and may sell them at such price as they can obtain. No debentures can be for a less sum than \$100. With the same sanction the directors may hypothecate, mortgage or pledge the real or personal property of the company to secure any moneys borrowed for the above purpose. One-fourth part in value of the shareholders at any time have the right to call a special meeting of the company. The stock of the company is personal estate. The directors of the company call in the instalments on the stock, not less than ten per cent. within one year from the incorporation of the company.

General restrictions.

The provisions already mentioned of the General Clauses Act relative to books and transfers apply to companies under the Joint Stock Companies Letters Patent Act. Annual returns are required from companies, showing their financial position. No company formed by letters patent can issue any note payable to bearer or any promissory note intended to be circulated as money or as the note of a bank, nor can it engage in the business of banking or insurance. The charter of a

company is forfeited by a non-user during three consecutive years at any one time, or if the company does not go into actual operation within three years after it is granted. Companies may be specially incorporated to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor or committee of a lunatic. In this case the High Court of Justice may appoint such a company, if approved of by the Lieutenant-Governor in Council, to act in any trust capacity. No company which has issued or with authority to issue debentures can act in this capacity.

The directors of every company incorporated either by special Act or by letters patent must insert the word "limited" or the words "limited liability" in every written contract or undertaking of the company after the name of the company, where it first occurs in the contract or undertaking. If they do not observe this provision they become jointly and severally liable themselves on the contract. In like manner the company must use the word "limited" after its name wherever it is exposed for public inspection. The company itself and the directors are liable to a fine of twenty dollars for each day on which the name is not so used. If any director or officer of a company, or any other person on its behalf, uses a seal for the company which has not the word "limited" on it by so doing he incurs the penalty of two hundred dollars. If the company's signature is affixed to any bill of exchange, promissory note, cheque, or order for money or goods without the word "limited" upon it, the person authorizing the signature or so signing becomes, in addition to the penalty named, personally liable to the holder of the security.

Special provincial statutory provisions, to which I can only allude, are made with regard to telegraph companies.

Road companies.

Timber slide companies.

Companies for construction of piers, wharves, dry-docks and harbours, of exhibition buildings, of gas and water-works.

Steam-heating and electric companies.

Co-operative associations.

Benevolent and provident societies.

Mechanics' institutes.

Immigration aid societies.

Cemetery companies.

Guarantee companies.

Winding  
up of  
Provincial  
companies

All incorporated companies or associations incorporated by provincial power, or whose objects are within the provincial legislative authority of the province may be wound up in the County Court. A company may be wound up (1) voluntarily; where the period fixed for the duration of the company has expired, or where the event has occurred upon the occurrence of which it is provided by the charter that the company is to be dissolved, and the company in a general meeting has passed a resolution requiring the company to be wound up.

Where the company has passed a special resolution requiring the company to be wound up.

Where the company, although it may be solvent as respects creditors, has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind it up.

(2) Where no resolution has been passed, the Court may, on the application of the contributory, make an order for winding up the company in case the Court is of opinion that it is just and equitable that the company should be wound up; the contributory means every person liable to contribute to the assets of a company in the event of its being wound up. From the commencement of the winding up of the company, it ceases to carry on its business, except so far as may be required for its beneficial winding up. Any transfer of shares after the commencement of the winding up is void, except with the sanction of the liquidators. The property of the company is applied in satisfaction of its liabilities, and after payment of them and the charges of winding up, its affairs are dis-

tributed among the members according to their respective rights and interests. Liquidators are appointed for the purpose of winding up the affairs of the company and distributing the property. The company appoints one or more persons to act as liquidators and fixes their remuneration; after their appointment all the powers of the directors cease. Inspectors may also be appointed. The liquidators must bring actions, carry on the business of the company, sell the property of the company, collect the debts, sell what cannot be collected, do the necessary financing for the company by bill or note; if necessary take out letters of administration to any deceased contributor, execute all deeds or receipts for the company, and do every act that may be necessary for the winding up of the affairs of the company and the distribution of its assets. A liquidator may fix a day within which creditors of the company must send in their claims; at the end of that time he is at liberty to distribute the assets of the company. The property or business of the company may be sold or transferred by the liquidators to another company, and the shares of that other company taken in satisfaction of the amount. A list of contributories is made out, including every shareholder or his representative, who is liable to contribute the amount unpaid on his stock; the list may be settled by the Court. Claims may be made by the liquidators from all persons who are contributors. No liquidator can purchase any part of a stock-in-trade or debts from assets of the estate. He must keep the moneys received by him in a separate account, and is subject to the summary jurisdiction of the Court in the same manner as the ordinary officers of the Court are subject to its jurisdiction. Liquidators have a right to apply to the Court to determine any question arising in the matter of the winding up. The Court may assess damages against any manager, officer or director guilty of misfeasance or malfeasance. Any party who is dissatisfied with any order of the Court may appeal to the Court of Appeal. All County Courts are auxiliary to one another, and matters may be transferred from one County Court to another so as to secure

Liquidators.

Contributories.



the winding up of the company. As soon as the affairs of the company are fully wound up the liquidators must make up an account and call the company together; they must also make a return to the Provincial Secretary. The Court may make an order that the company be dissolved, and this order must be reported by the liquidators to the Provincial Secretary. After the lapse of five years from the dissolution, no responsibility rests on the company or the liquidator on account of any of the books, accounts and documents of the company if they are not forthcoming. Where the shareholders or members of the company are entitled to the profits of the business of the company, and where a resolution has been passed to distribute the proceeds of all the assets of the company amongst the shareholders after payment of the debts, then notice must be given in the Ontario Gazette. A resolution may also be passed by such a company directing that proceedings be taken to reduce the capital; in this case also notice must be given of the resolution. A meeting of the company must be held not earlier than three months from the first publication of the notice in the Gazette. Creditors are called upon to file their claims. If the company has no creditors, or if the consent of the company's creditors is obtained, then the resolution is carried into effect. Where the capital of the company has become impaired, and the shareholders pass a special resolution to reduce the par value of all the shares of the company, they must be reduced in accordance with the terms of the resolution, but the amount still remaining payable upon the shares cannot be interfered with. In these latter cases the whole matter is carried out by resolution of the shareholders themselves, without the intervention of any Court or public official.

The Dominion has passed Acts relating to joint stock companies similar to those passed by the province. The Dominion statute, called the Companies Clauses Act, applies to every joint stock company incorporated by any special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except rail-

Dominion  
incorpora-  
tion.

R. S. C.  
cc. 118, 119.

way companies, or banks or insurance companies. Another Act has also been passed by the Dominion, providing for the incorporation of companies by letters patent; this Act also extends to all corporations for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except railway companies, banks and insurance companies.

Provision has also been made by the Dominion Parliament for the winding up of incorporated banks, savings banks, incorporated insurance companies, loan companies, building societies, and incorporated trading companies doing business in Canada. Railway or telegraph companies or building societies which have not a capital stock are excluded from these provisions. In order to come within the operation of the Act the companies must be insolvent or in liquidation, or in process of being wound up, and on petition by any shareholder or creditor, assignee or liquidator, asking to be brought under the provisions of the Act. A company is deemed insolvent (a) If it is unable to pay its debts as they become due. (b) If it calls a meeting of its creditors for the purpose of compounding with them. (c) If it exhibits a statement showing its inability to meet its liabilities. (d) If it has otherwise acknowledged itself to be insolvent. (e) If it assigns, removes or disposes of, or attempts, or is about to assign, remove or dispose of any of its property with intent to defraud, defeat or delay its creditors or any of them. (f) If with such intent it has procured its money, goods, chattels, lands or property to be seized, levied on, or taken under or by any process or execution. (g) If it has made any general conveyance or assignment of its property for the benefit of its creditors; or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or main part of its stock-in-trade or assets without the consent of its creditors, or without satisfying their claims. (h) If it permits execution issued against it, under which any of its goods, chattels, land or property are seized, levied upon, or taken in execution, to remain unsatisfied till within four days of the

Winding  
up under  
Dominion  
legisla-  
tion.

R. S. C.  
c. 129

time fixed by the sheriff or proper officer for a sale, or for fifteen days after the seizure.

Insolvency  
of com-  
pany.

The company is deemed to be unable to pay its debts as they come due: whenever a creditor to whom the company is indebted in a sum exceeding \$200, then due, has served on the company a demand in writing requiring payment of the amount, and the company has for ninety days in the case of a bank, and for sixty days in all other cases, neglected to pay the debt, or secure or compound for it. When a company becomes insolvent, a creditor for the sum of at least \$200 may, after four days' notice of the application to the company, apply by petition to the court in the province where the head office of the company is situated; or if there is no head office in Canada, then in the province where its chief place or one of its chief places of business is situated, for a winding up order. The Court may make such inquiry as it considers necessary, and may have the affairs of the company investigated before making a winding up order. If a winding up order is made the company ceases to carry on business except as required for the beneficial winding up of the company. When the order is made, no further proceedings can be taken against the company, except with the leave of the Court. Proceedings may be stayed in the winding up matter by the application of any creditor or contributory. The Court must have regard to the wishes of the creditors, contributories, shareholders or members, as proved to it by any sufficient evidence; if necessary, meetings must be held to ascertain the wishes of these persons; in the case of creditors, regard must be had to the amount of the debt due to each creditor. In making a winding up order the Court may appoint a liquidator, or more than one liquidator. No liquidator can be appointed unless previous notice is given to all concerned as prescribed by the Court. An incorporated company may be appointed liquidator, and may act through any one of its officers designated by the Court. All matters relating to the liquidator, his salary, his duties and remuneration, are provided for by the Court. His powers are: that with the approval of the Court he may enter suit, carry on the

Liquida-  
tor.

business of the company so far as is necessary to its beneficial winding up, sell the property, and generally do everything necessary for winding up the affairs of the company and distributing its assets. The liquidator has the power of compromising all debts due to the company, take any security for the discharge of its debts, and give a complete discharge in respect of them; and is subject to the summary jurisdiction of the Court in the same way as its ordinary officers; any remedy against him may be sought by a summary petition. As soon as possible after the commencement of a winding up of the company a list of contributories is settled. Contributories are persons who are liable to contribute to the payment of the debts of the company. Calls may be made by the Court, but no call can compel payment of a debt before its maturity, or in any way increase the extent of the liability of any contributory. If there is reasonable cause for believing that any contributory, or any past or present officer of the company, is about to quit Canada, or otherwise abscond, the Court may make an order for his arrest. Persons entitled to vote at meetings of the company, whether contributories or creditors, shareholders or members, may vote for any person or may give a written proxy. All debts may be proved against the company, no matter whether present or future, certain or contingent; an estimate is made of the value of debts or claims subject to contingency, or scunding only in damages. Clerks and employees are entitled to a special claim for wages for arrears not exceeding three months before the date of the order. The property of the company is applied in satisfaction of its liabilities, and the charges incurred in winding up its affairs. Any property or estate remaining must be distributed among the members and shareholders according to their rights and interests in the company. A day may be fixed by the Court within which creditors must send in their claims. The liquidator is not liable to any person of whose claim he had not notice at the time of the distribution of the assets. Creditors may be compromised with by the liquidator; those with securities must value

Contribu-  
tories.

these securities; if the security is a mortgage on real property or a ship, then the property can only be assigned and delivered to the creditor subject to all previous claims and upon his securing the estate of the company against such previous claims. No lien or privilege can be granted for the amount of any judgment debt or interest by the issue or delivery to the sheriff of any writ of execution or any garnishee order; the only creditor's lien which may be privileged is one for costs, which the plaintiff may possess under the law of the province in which his writ was issued. All gratuitous contracts or conveyances, or contracts without consideration, or with a nominal consideration, respecting either real or personal property made by a company in respect to which a winding up order is made within three months next preceding the commencement of the winding up, or at any time afterwards, are void. All contracts by which creditors are injured, obstructed or delayed, made by a company unable to meet its engagements, and in respect to which a winding up order is made with a person knowing the inability, or having probable cause for believing the inability to exist, or after the inability is public and notorious, whether the person is its creditor or not, is presumed to be made with intent to defraud creditors. A contract or conveyance for consideration by which creditors are injured or obstructed made by a company unable to meet its engagements with a person ignorant of the inability and before the inability has become public and notorious, but within thirty days before the commencement of the winding up proceedings, or at any time afterwards, is voidable; it may be set aside upon such terms as the Court orders as to the protection of a person taking it, or actual loss or liability by reason of the contract. All contracts by a company with intent fraudulently to impede, obstruct or delay its creditors made with the knowledge of the person contracting with the company, and which have the effect of impeding, obstructing or delaying creditors, are null and void. All securities given by the company for payment whereby any creditor obtains an unjust preference are void. Every

Gratuitous  
contracts.

Fraudu-  
lent pre-  
ferences.

payment made within thirty days next before the commencement of the winding up by a company unable to meet its engagements in full to a person who knows of the inability, or has probable cause for believing the inability to exist, is void. If any valuable security is given in consideration for the payment, the security, or its value, must be restored to the creditor upon the return of the payment. When a debt due or owing by the company has been transferred to a contributory who knows, or has probable cause for believing, the company to be unable to meet its engagement, or in contemplation of the company's insolvency, for the purpose of enabling the contributory to set off by way of compensation or set off the debt so transferred, the transaction is void. Appeals are allowed from the order of a Judge to the Court of Appeal for Ontario if the question to be raised on the appeal involves future rights, or if the order or decision is likely to affect other cases of a similar nature in the winding up proceedings, or if the amount involved exceeds \$500. An appeal lies further to the Supreme Court of Canada by leave of a Judge of that Court from the judgment of the Court of Appeal for Ontario if the amount involved in the appeal exceeds \$2,000. When a winding up order is made, if it appears in the course of the proceedings that any past or present director or officer of the company is guilty of any offence in relation to the company for which he is criminally liable, the liquidator may be directed to prosecute the offender. Special provisions are made with regard to banks; in the case of a bank the application for a winding up order must be made by a creditor for a sum of not less than \$1,000; and the Court must, before making the order, direct a meeting to be held of the shareholders of the bank and of the creditors of the bank. The chairman of such meeting reports the result to the Court, and if a winding up order is made the Court must appoint one or not more than three liquidators. The liquidators must ascertain as nearly as possible the amount of notes of the bank actually outstanding, and must reserve until two years after the date of the winding up order, or until the last dividend, divi-

Winding  
up of  
banks.

dends on such part of this amount in respect of which claims have not been filed.

**Insolvent  
insurance  
companies.**

An insurance company is liable to be dealt with as if it were insolvent whenever its license has expired or been withdrawn under the Insurance Act, and has not been renewed within thirty days. Upon the making of a winding up order, the policy holders in Canada are entitled to claim for the full net valuation of their policies at the time of the winding up order, including bonuses and profits. A deduction is made for any amount advanced by the company on the security of the policy; the claims then rank with judgments obtained and claims matured on Canadian policies in the distribution of the assets. Policies may be valued by the superintendent of insurance and a general statement compiled by the liquidator, showing the position of the company. The securities held by the Minister of Finance, and the assets held by the trustees provided in the Insurance Act, are then sold or realized as the Court directs; the proceeds after payment of expenses and re-insuring policies, if that course be adopted, are distributed pro rata amongst the claimants as appearing on the liquidator's statement. The claimants on life insurance policies accruing after the date of the winding up order, and before the expiration of thirty days after the filing of the final statement by the liquidator in the Canada Gazette, are entitled to claim as creditors for the full net amount of their claim. If before the expiration of the thirty days the holder of a current policy signifies a willingness to accept an insurance in some other company for the amount which can be secured by the dividend on his claim, then the liquidator may effect for that person an insurance in another company, and may apply the dividend on his claim to that purpose, but such an insurance can be effected only as part of a general scheme for the assumption by some other company of the whole or part of the outstanding risks of the insolvent company. Companies doing an insurance business other than a life insurance business are deemed insolvent upon their failure to pay any undisputed claim arising or loss insured against in



Canada upon any policy held in Canada, for the space of sixty days after it became due; or, if disputed, after final judgment and tender of a legal valid discharge; in either case a notice is required to the Minister of Finance. If a claim for loss is by the terms of the policy payable on proof of the loss without any stipulated delay, a notice to the Minister of Finance cannot be given until after the lapse of sixty days from the time when the claim comes due. Any deposit held by the Minister of Finance for policy holders must be applied pro rata towards the payment of all claims duly authenticated against the company upon policies issued to policy holders in Canada. Holders of current policies are entitled to claim as creditors for a part of the premium paid proportioned to the period of their policies unexpired at the date of the winding up order; this returned or unearned premium ranks with judgments, and with claims accrued in the distribution of the assets. In the same way as with life insurance policies, claims accruing after the date of the winding up order and before thirty days after the filing of the liquidator's final statement, are entitled to claim for the full net amount of their claim. Arrangements may be made for the reinsurance of risks in the same way as in the case of life policies.

The Banking Act applies to every bank incorporated after the first of January, 1890, as well as to thirty-six banks specially mentioned in the schedule to the Act; these banks being in existence at the time of the passing of the Act. As to banks incorporated after the date just mentioned, their capital stock must be not less than \$500,000, to be divided into shares of \$100 each. The number of provisional directors must be not less than five nor more than ten. For the purpose of organizing the bank, provisional directors may cause stock books to be opened, after giving public notice. As soon as not less than \$500,000 stock has been bona fide subscribed, and a sum not less than \$250,000 been paid to the Minister of Finance and Receiver-General, provisional directors may call a meeting of the subscribers to the stock; at this meeting directors are elected, who must be not less than five nor more than

Incorporation of banks.  
53 Vict. c. 31.

ten; upon the election of these directors the functions of the provisional directors cease. The bank cannot issue notes or commence the business of banking until it has obtained from the treasury board a certificate permitting it to do so. No certificate can be given until all the requirements of the Banking Act and of the special Act of incorporation of the bank have been complied with. It must be issued within one year from the passing of the special Act. If the certificate is not obtained within the year, the Act of incorporation lapses. Upon the issue of the certificate the Minister of Finance repays the deposit of \$250,000, less a percentage equal to two and a half per cent. of the average amount of its notes in circulation during any time it has been in operation. If no certificate is issued, the whole amount deposited is returned. The management of the bank is regulated by the shareholders, who pass by-laws as to its administration. The stock, property, affairs and concerns of the bank are managed by directors, to be elected annually, and who are eligible for re-election; directors must hold capital stock of the bank as follows :

**Directors.** When the paid-up capital stock is \$1,000,000 or less, each director must hold stock on which not less than \$3,000 has been paid up; when the paid-up capital stock is over \$1,000,000 and does not exceed \$3,000,000, each director must hold stock on which not less than \$4,000 has been paid up; when the paid-up capital stock exceeds \$3,000,000, each director must hold stock on which not less than \$5,000 has been paid up. A majority of the directors must be natural born or naturalized subjects of Her Majesty. Directors in office remain in office until a new election is held, if from any cause any annual election fails to be held.

The directors, or not less than twenty-five of the shareholders, may at any time call a special general meeting of the shareholders, upon giving six weeks' notice, specifying the object of the meeting. Shareholders on all occasions at which the votes of shareholders are taken have one vote for each share

held at least thirty days before the time of meeting; in all cases when votes are taken the voting is by ballot, and proxies are allowed. All calls must be paid; paid-up capital stock may be either increased or reduced by by-law of the shareholders, subject to the ratification of the treasury board. Bank shares are personal estate, and are assignable and transferable in such form as the directors prescribe. The shares are payable in instalments; any subscription for any share may be cancelled unless ten per cent. at least on the amount subscribed for is annually paid not later than thirty days after the time of subscription. The directors may make calls on shares at intervals of not less than thirty days, with thirty days' notice; no call can exceed ten per cent. of the amount of the share; shares may be forfeited for non-payment of calls and sold by the directors. All assignments or transfers of shares must be made and registered, and accepted in transfer books kept by the bank. The person transferring the stock may also be required by the bank to discharge all his debts or liabilities to the bank, exceeding the amount of the stock retained by him, if any. All transfers of shares are null and void, unless the person who makes the transfer, or in whose name or on whose behalf it is made, is at the time the registered owner in the books of the bank of the shares, or has the registered owner's assent to the sale. The remedies of a purchaser not having knowledge of the defect, as well as his rights under the contract of sale in such case, are not affected. If a bank stock has been sold under execution, the officer by whom the writ was executed certifies to the bank to whom the sale was made; the transfer is then executed to the purchaser; transmission of shares otherwise than by transfer, for instance, death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, must be proved as the directors may require; and until proved no person is entitled to participate in the profits of the bank or to vote on the shares. If the transmission has taken place by virtue of any will, or by intestacy, the probate of the will or

Trustees  
holding  
bank  
shares.

letters of administration must be produced. The bank is not bound to see to the execution of any trust to which any share is subject; the receipt of the person in whose name the share stands in the books of the bank is a sufficient discharge to the bank for any dividend or any other sum of money, unless express notice to the contrary has been given to the bank. Persons holding stock in a fiduciary possession are not liable as shareholders, but the estate and funds in their hands are liable in the same way as the persons owning the estate would be if competent to hold themselves. Dividends may be declared by the directors, and may be paid after thirty days' notice. No dividend or bonus can be declared so as to impair the paid-up capital; if declared or made payable with this result, the directors knowingly and wilfully concurring are jointly and severally liable for the amount as a debt due by them to the bank. No division of profits in any way exceeding the rate of eight per cent. per annum can be made by a bank, unless after making the division it has a rest or reserve fund equal to at least thirty per cent. of its paid-up capital, and all bad and doubtful debts must be deducted before the amount of the rest is calculated. A bank must hold not less than forty per cent. of its cash reserve in Dominion notes; it may issue its own notes, payable to bearer on demand and intended for circulation, but these notes cannot be for less than \$5, and the total amount of notes in circulation at any one time cannot exceed the amount of the unimpaired paid-up capital of the bank. A bank cannot pledge, assign, or hypothecate its notes; no advance or loan made on the security of the notes of a bank is recoverable from the bank or its assets. Notes issued are the first charge upon the assets of a bank in case of its insolvency. The payment of any amount due to the Government of Canada is the second charge; the payment of any amount due to any of the provinces is the third charge. Banks are required to pay to the Minister of Finance annually a deposit equal to five per cent. of the average amount of notes in circulation during the preceding twelve months; the amounts paid in this way form the bank circulation redemption fund; this fund is held

Reserve.

Notes a  
first charge  
on assets.

for the purpose of paying notes issued by the bank and intended for circulation and then in circulation. If a bank suspends payment its notes bear interest at the rate of six per cent. from the day of the suspension to such day as is named for payment by the liquidator. Bills or notes of the bank, signed by some officer of the bank appointed by the directors to sign them, promising the payment of money to any person or his order, or to the bearer, though not under the corporate seal of the bank, are as binding on it as if issued by any private person in his private capacity. Signatures may be made by machinery, but one signature on each bill or note must be in the actual handwriting of the person authorized to sign it.

The business which may be transacted by a bank is as follows, besides ordinary banking business:

- (1) It may deal in gold and silver coin and bullion.
- (2) It may deal in, discount and lend money, and make advances upon the security of, and may take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stocks, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise; or Dominion, Provincial, British, foreign and other public securities; but it cannot either directly or indirectly deal in the buying or selling or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatever; it must not either directly or indirectly purchase or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock or of the capital stock of any bank; it must not either directly or indirectly lend money or make advance upon the security, mortgage or hypothecation of any land, tenements or immovable property, or upon any ships or other vessels, or upon the security of any goods, wares and merchandise. All securities acquired by the bank may in case of default be dealt with, sold or conveyed in the same way as by private individual. A bank may take, hold and dispose of mortgages upon real or personal

Business  
which  
may be  
done by  
banks.

property by way of additional security for debts contracted to the bank in the course of its business. A bank may purchase lands offered for sale under execution as belonging to any debtor of the bank, or offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank, where, under similar circumstances, an individual could buy. A bank may acquire and hold an absolute title to any real property mortgaged to it as security for a debt, either by obtaining a release of the equity of redemption, or by procuring a foreclosure, or by any other means whereby, as between individuals, an equity of redemption can by law be barred; but no bank can hold any real property, howsoever acquired, except what it needs for its own use, for longer than seven years. Every bank may advance money in aid of the building of any ship or vessel, and for this purpose may have the same right of taking security upon the ship or vessel, while building, as private persons. A bank may make advances upon warehouse receipts and bills of lading, but these securities are dealt with in another place, so I need not describe them here. A bank may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per cent. per annum; no higher rate of interest can be recoverable by the bank. The bank may allow any rate of interest whatever upon money deposited with it. No instrument, discounted or otherwise, held by the bank is held to be void on the ground of usury as regards the bank, but the bank cannot recover a higher rate of interest than seven per cent. per annum; in addition to discount, banks may recover collection fees at certain rates; the bank is entitled to receive deposits from any person and to allow interest. In case of the insolvency of a bank, each shareholder is liable for the deficiency to an amount equal to the par value of the shares held by him in addition to any amount not paid up on his shares. The liability of a bank to repay money deposited with it and to pay dividends continues, notwithstanding any statute of limitations, or any law relating

Interest.

No Statute  
of Limita-  
tions.

to prescription; if a bank suspends payment for ninety days consecutively, or at intervals within twelve consecutive months it becomes insolvent and forfeits its charter or act of incorporation, so far as regards any further banking operations. If any suspension of payment in full continues for three months after the expiration of the time necessary to constitute a bank insolvent, and no proceedings are taken for the winding up of the bank, the directors must make calls on the shareholders for the amount necessary to pay all the debts and liabilities of the bank without waiting for the collection of debts due. Persons who have been shareholders of the bank and have transferred their shares or registered the transfer of their shares within sixty days before the commencement of the suspension of payment, and all persons whose subscriptions to stock in the bank have been cancelled within sixty days before the commencement of the suspension of payment by the bank, are liable as if they had held their shares at the time of the suspension. Every person who commits an offence against the provisions of the Banking Act is liable to a fine not exceeding \$1,000, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the Court before which the conviction is held.

Insol-  
vency.

Remembering that there is double legislation relating to insurance companies, we will just consider the provincial legislation regarding them, and then glance at the Dominion laws on the subject.

Insurance companies, then, by the provisions of the Ontario statutes, may be incorporated in various ways: first, by letters patent; second, on the mutual plan.

Provincial  
Incorporation.  
R. S. O.  
c. 107.

1. By letters patent. A charter may be issued to any number of persons not less than five. If the company is a fire, or fire and marine, or accident or life, or life and accident, or guarantee or surety company, the capital stock must be not less than \$500,000, with liberty to increase it to \$1,000,000 with the assent of the Lieutenant-Governor in Council. Before applying for license the company must have at least \$300,000 sub-

1. Letters  
Patent.



scribed for and taken up bona fide, and \$30,000 paid into some chartered bank. If the company is a live stock insurance company it must have at least \$300,000 of stock, with liberty to increase to \$500,000; \$150,000 must be shown to have been subscribed, and \$15,000 to have been paid into some chartered bank. If the company is a plate glass insurance company, or a company insuring against the explosion of steam boilers, the stock must be at least \$100,000, with liberty to increase to \$250,000; \$60,000 must be shown to have been subscribed, and \$6,000 paid into some chartered bank.

The corporate powers of any of the above companies are forfeited by non-user during three years after date of incorporation. If a company has undertaken contracts and discontinues business for one year, or if its license remains suspended for one year, or if its license is cancelled otherwise than by mere effluxion of time, and is not renewed within sixty days after notice to the Provincial Treasurer of the company's failure, thereupon the company's corporate powers cease and determine except for the sole purpose of winding up its affairs. Upon petition of the Attorney-General or any person interested the High Court may appoint a receiver and wind up the company.

2. Mutual  
insurance  
companies.

2. Companies may also be formed for mutual insurance, which means insurance given in consideration of a premium note or undertaking with or without an immediate cash payment thereon. A cash-mutual company is a company organized to transact mutual insurance, but empowered to undertake contracts of insurance on both the cash plan and the premium note or mutual plan. Both of these companies are formed as follows :

Ten freeholders in any municipality may call a meeting of the freeholders to consult whether it is expedient to establish a fire insurance company upon either the mutual or cash-mutual principle. If thirty freeholders of the municipality are present at the meeting, and the majority of them determine that it is expedient to establish a mutual or cash-mutual insurance company they proceed as follows:

Three persons are named to open and keep a subscription book in which owners of property, movable or immovable, within the Province of Ontario may sign their names and enter the sums for which they bind themselves to effect insurance with the company. When fifty or more persons, being owners of movable or immovable property in the Province of Ontario, have signed their names in the subscription book and bound themselves to effect insurance in the company, which in the aggregate amount to \$100,000, a meeting of the company is called. At this meeting the name and style of the company are adopted, a secretary appointed and a board of directors elected. A place is also named at which the head office of the company is located. At least twenty-five of the subscribers must be present at this meeting. Copies of the resolutions must then be filed in the registry office; when so filed, the subscribers and all other persons effecting insurance in the company then become members, and the company becomes a body corporate under the name adopted. The corporate powers are forfeited by non-user or by discontinuance of business, or suspension or cancellation of license, as in the case of joint stock companies by letters patent. A president and vice-president are next appointed from among the directors who were chosen at the first meeting; a secretary-treasurer or manager of the company is appointed. The company is ready for business on receiving from the Treasurer of the Province a license setting forth that the company has complied with the requirements of the law; this license operates for a term of twelve months, and may be renewed from time to time. Any mutual or cash-mutual fire insurance company may raise a guarantee capital of any sum not less than \$20,000 nor exceeding \$200,000, which belongs to the company, and is liable for all the losses, debts and expenses of the company. It must be subscribed by not less than ten persons, and no one person can subscribe for more than twenty per cent. of the guaranteed capital stock. The subscribers have, each of them, such rights as are declared by by-law. Any mutual or

Guarantee  
capital.

Insurance  
on the  
wholly  
cash prin-  
ciple.

cash-mutual fire insurance company may raise a share or stock capital of not less than \$100,000, and may increase this amount to a sum not exceeding \$500,000. Shares are personal estate and transferable, but transfers must be entered on the books of the company, and are subject to similar liabilities as shares in other joint stock companies; after \$100,000 of this stock or share capital has been bona fide subscribed and twenty per cent. paid in, the company may make insurance for premiums payable wholly cash. No insurance on the wholly cash principle makes the insured a member of the company or liable to contribute in any way beyond the cash premium agreed upon, or give any right to a participation in the profits or surplus funds of the company. A license must be procured from the Provincial Treasurer to enable a mutual or cash-mutual fire insurance company to do this class of insurance business. The net annual profits and gains of the company are applied in the first place to pay a dividend on the share capital not exceeding ten per cent. per annum; the surplus, if any, must be applied as provided by the by-laws of the company. After the share capital has been subscribed at least two-thirds of the stockholders must be holders of shares of the new stock to the amount of \$3,000, on which all calls have been fully paid up; the other third must be members of the company and insured in it to the amount of \$800 at least. Any mutual

Mutual  
insurance  
company  
becoming  
stock com-  
pany.

or cash-mutual fire insurance company having surplus assets aside from premium notes or undertakings sufficient to re-insure all its outstanding risks after notice and with the consent of two-thirds of the members who are present at any annual meeting and of two-thirds of the subscribers of guaranteed capital or share or stock capital, may become a stock company. All companies must deposit with the Government a certain amount of security. When a company makes a deposit it may withdraw it with the sanction of the Lieutenant-Governor in Council whenever it appears that the company is carrying on its business under license from the Dominion of Canada. If, from the annual statement, or on examination into the affairs of the company, it appears that the re-insurance value of all its risks out-

standing in Ontario, together with any other liabilities in Ontario, exceeds its assets in the province, including the deposit in the hands of the treasurer, then the company must make good the deficiency at once or forfeit its license. Where a company fails to make the necessary deposit, or where written notice is served on the Provincial Treasurer, of an undisputed claim arising from losses insured against in Ontario remaining unpaid for the space of sixty days after being due, or of a disputed claim after final judgment in a regular course of law, and tender of a legal valid discharge being unpaid, so that the amount of securities representing deposits of the company is liable to be reduced by sale of any part, then the license of the company is ipso facto null and void and is deemed to be cancelled. It may be renewed, and the company may again transact business if, within sixty days, the deficiency is made good. The deposit is liable to be applied in paying the claims of the company at any time after a period of sixty days. A receiver is appointed by the Court, who calls upon the company to furnish a statement of its outstanding contracts and upon all claimants to file their claims. The securities deposited with the Treasurer cover only contracts undertaking or effecting for valuable consideration any contract, indemnity, guarantee, suretyship, insurance, endowment, tontine or annuity on life or any like contract which accrues payable on or after the occurrence of some contingent event. The deposit further applies to contracts having for their object some property in the province or property in transit to or from the province, or the life, safety, health, fidelity or insurable interest of some resident of the province, or where the contract itself makes the payment under it primarily payable to some resident of the province. Deposits may be released by satisfying the Treasurer of the Province that all liabilities of the company have either been discharged or re-insured. As has been stated, no company can do insurance business without obtaining a license from the Provincial Treasurer. Except companies licensed by the Treasurer, and except companies licensed by the Dominion of Canada, no company can

Cancellation of license.

License.

General  
restrictions.

undertake, or effect, or solicit, or agree, or offer to undertake or effect any contract of insurance as above explained in Ontario. The general routine of management of an insurance company is similar to that of other joint stock companies. Special returns are required from the various kinds of insurance companies. Contracts of fire insurance cannot in any case exceed three years. The insurance of mercantile and manufacturing risks, if on the cash system, can only be for terms not exceeding one year. Policies may, however, be renewed at the discretion of the board of directors by renewal receipts instead of policies. Minimum rates are provided for. If notification is received by a company from a person already insured of a further insurance, this additional insurance is deemed to be assented to unless the company within two weeks of receipt of the notice signify in writing their dissent. It is optional with directors to pay claims which are otherwise void on the grounds of change of risk, change of property, prior or subsequent insurance, or want of assent to further insurance. For the general benefit of insured and insurer the Legislature has declared statutory conditions; these conditions as against insurers are deemed to be part of every fire insurance contract. If a company or other insurer desires to vary these conditions, then the variations must appear printed in conspicuous type and in ink of different colour upon the policy; unless this condition is complied with the variations are not binding. If, by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in Ontario as to the proof to be given after a fire cannot be strictly complied with, the Court, if it considers it inequitable that the insurance should be deemed void or forfeited, may disallow any objection to the payment of the policy on that ground. The same latitude is also allowed where, after a statement or proof of loss has been given in good faith by the assured, and the company objects to the loss upon other grounds than for imperfect compliance with its own conditions, or do not within a reasonable time notify the insured in writing of their objection. A justice of the peace may

Statutory  
conditions  
of insurance.

examine on oath any person who comes before him to give evidence touching any loss by fire. A mutual or cash-mutual fire insurance company may accept premium notes or the undertaking of the assured for insurances, and may undertake contracts in consideration of these notes. They are to be assessed for the losses and expenses of the company. The directors may demand in cash a part or first payment of the premium or premium note at the time that the insurance is made; this first payment is credited on the premium note, but not more than fifty per cent. can be demanded in cash at the time of the application or of the effecting the insurance. All premium notes or undertakings are assessed at such intervals for such sums as the directors think necessary for losses, expenses and reserves. These assessments are payable within thirty days after notice; if not paid, the contract of insurance is null and void. It may be revived by subsequent payment unless the secretary gives notice to the contrary. Members who fail or neglect for thirty days after notice to pay their assessments may be sued. A reserve fund may be formed by the company, and for that purpose a board of directors may levy an annual assessment not exceeding ten per cent.; forty days after the expiration of the term of insurance the premium note or undertaking given for the insurance must be given up to its maker if all losses and expenses with which the note is chargeable have been paid up. No premium note or undertaking can create a lien upon lands on which the insured property is situate. No execution can issue against a mutual or cash-mutual company upon a judgment until after the expiration of sixty days from its recovery. Insurance companies are inspected by a provincial officer called the Inspector of Insurance, who is subject to the instructions of the Treasurer of Ontario. If a company proposes to go into voluntary liquidation, at least one month's notice in advance must be given to the Treasurer and to the inspector, and is also published in the Ontario Gazette and one other newspaper. The directors of a mutual or cash-mutual fire insurance company may re-insure out of the reserve fund, if it is to be

Premium  
notes.Reserve  
fund.Inspection  
of insur-  
ance com-  
panies.

wound up, the unexpired contracts for which premiums or premium notes have been taken. When a company is wound up, each person contracted with on the cash plan is entitled to a refund from the company of the unearned proportion of the cash premium.

Registration of insurance companies

55 Vict. c. 39.

Besides the requirements above described, relating to the formation of life insurance companies, the Legislature of Ontario has further declared that no life insurance can be effected within the province except by a duly registered corporation. For purposes of this registration two registers are kept. One is called the Insurance License Register, and is kept by the inspector of insurance. The other register is called the Friendly Society Register, and is kept by the registrar of friendly societies. The same official at present keeps both registers.

Friendly Society.

A friendly society includes any association which undertakes or effects for valuable consideration, or agrees or offers to undertake or effect with any person in the province, any contract of insurance. There are certain associations not entitled to register as friendly societies. (1) Any corporation licensed or required by law to be licensed for the transaction of business as an insurance corporation. (2) Any corporation distributing charity or gratuities only. In any case of doubt whether the bona fide intention of a society is to afford charitable aid or relief, and not to create either any contractual right in the members or any contractual obligation against the society, upon the society making such intention apparent in its rules and publications, the registrar may declare the organization exempt from the operation of this Act. (3) Any corporation undertaking insurance other than contracts of insurance made exclusively with its own members against sickness, accident, disability, infirmity or old age, or for mortuary or funeral benefits, or for the fidelity of members as financial officers of the society or any branch or lodge thereof, or for a sum or for collective sums not exceeding \$3,000 in all, payable at the death of the assured. (4) Proprietary or trading societies, or societies having under fifty members, or those conducted as a mercantile



or trading venture, or the insurance funds of which are held other than as trust funds for the members. All of these four species of associations must be registered and licensed for the transaction of business.

Insurance corporations licensed under the provincial legislation I have previously described, are entitled to be registered by virtue of their license. Insurance licensees of the Dominion of Canada, upon proof of their license subsisting, may be registered on the Ontario Insurance License Register.

Friendly societies incorporated under the Benevolent Societies Act of Ontario, when their declaration declares insurance, or contracts in the nature thereof, as among the purposes of the society, are entitled to registration as a friendly society. No such friendly society is deemed to be managed and operated according to the true intent of the Act respecting Benevolent, Provident and other Societies, unless the persons insured in or by the society exercise, either directly or through representatives elected for a term not exceeding three years, effective control over the insurance funds of the society; and no corporation whatsoever, wherein the persons, who by virtue of their office have the disposition, control, or possession of the insurance funds hold such office for life, are eligible for registry as a friendly society.

Registration must be renewed from year to year. No friendly society is required to make any cash deposit with the province. The result of this legislation is that no person or persons, or company or corporation can effect insurance in Ontario except those registered. Stringent rules are prescribed further as to the books to be kept and the audit to be made by and for the registered companies. The object of the Legislature is to secure as far as possible the solvency of companies which undertake insurance.

Every insurance corporation is liable to have its registry suspended by the registry officer upon its failure to pay an undisputed claim, on an insurance contract for the space of sixty days after being legally payable, or if disputed, after final judgment and tender of

a legal valid discharge, and (in either case) after notice supported by affidavit of the society's default delivered to the registry officer.

Certain  
events to  
cancel  
registry.

The happening of any of the following events shall ipso facto, and without notice from the registry officer, cancel the registry of the corporation concerned:—

- (a) The repeal or the expiry without renewal of its charter, instrument of association, or deed of settlement, or of its acts of incorporation; or
- (b) The revocation of its corporate powers; or
- (c) The cancellation, or the expiry without renewal of the license or other document of authority by which the corporation was authorized to exercise its corporate powers for the transaction of insurance; or
- (d) The passing of a resolution by the corporation for its winding up; or
- (e) The making of an order by any Court for the winding up of the corporation.

Certain  
events to  
suspend  
registry.

The happening of any of the following events ipso facto and without notice from the registry officer suspends the registry of the corporations concerned:—

- (a) The suspension of any of the acts, instruments or documents mentioned in the first and third subdivisions of the next preceding paragraph;
- Or (b) the suspension of the corporate powers of the corporation.

There are certain general rules relating to insurance contracts which must be next stated. They are as follows:

Terms,  
etc., of  
contract  
invalid un-  
less set out  
in full.

(1) Where any insurance contract made by any corporation whatsoever is evidenced by a sealed or written instrument, all the terms and conditions of the contract must be set out in full on the face or back of the instrument forming or evidencing the contract; and unless so set out, no term or condition, stipulation, warranty or proviso modifying or impairing the effect of any such contract is valid, or admissible in evidence to the prejudice of the assured or beneficiary.

A registered friendly society may, instead of setting out the complete contract in the certificate or other instrument of contract, indicate by particular references those articles or provisions of the constitution, by-laws or rules which contain all the material terms of the contract not in the instrument of contract itself set out; and the society must deliver also to the assured a copy of the constitution, by-laws and rules referred to.

(2) No contract of insurance can contain, or have endorsed upon it, or be made subject to any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the corporation, unless such term, condition, stipulation, warranty or proviso is limited to cases in which the statement is material to the contract, and no contract of insurance can be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

Contract not to be invalidated by erroneous statement in application unless material.

(3) The question of materiality in any contract of insurance is a question of fact for the jury, or for the Court if there is no jury, and no admission to the contrary can have any force or validity.

Materiality, how decided.

(4) After any loss or damage to insured property the insuring corporation has by a duly accredited agent an immediate right of entry and access sufficient to survey and examine the property, and make an estimate of the loss or damage; but the insurer is not entitled to the disposition, control, occupation, or possession of the remains or salvage thereof, unless the insurer undertakes to reinstate the property or accepts abandonment.

Insurer's right of entry after loss.

(5) After any loss or damage to insured property, it is the duty of the assured when, and as soon as practicable to secure the insured property from damage, or from further damage, and to separate as far as reasonably may be, the damaged from the undamaged property, and to notify the insurer when such separation has been made; and thereupon the insurer is entitled to entry and access sufficient to make an appraisalment or particular estimate of the loss or damage.

Duty of assured when, and as soon as practicable to secure the insured property from damage, or from further damage, and to separate as far as reasonably may be, the damaged from the undamaged property, and to notify the insurer when such separation has been made; and thereupon the insurer is entitled to entry and access sufficient to make an appraisalment or particular estimate of the loss or damage.

Error in age not to avoid contract; but benefit to abate.

(6) Where the age of a person is material to any insurance contract, and such age is given erroneously in any statement or warranty made for purposes of the contract, such contract shall not be avoided by reason only of the age being other than as stated or warranted, if it appears that such statement or warranty was made in good faith and without any intention to deceive; but the person entitled to recover on such contract is not entitled to recover more than an amount which bears the same ratio to the sum that that person would otherwise be entitled to recover as the premium proper to the stated age of such person bears to the premium proper to the actual age of such person—the said stated age and the actual age being both taken as at the date of the contract, but in no case shall the amount receivable exceed the amount stated or indicated in the contract.

Fractional part of year.

(7) If the error in age includes a fractional part of a year exceeding a half year, such fractional part is computed as a whole year, but if the fractional part does not exceed a half year it is wholly disregarded in the computation.

Where age is taken as greater than known age

(8) When, by the terms and for the purposes of the contract, the age of the person in respect of whose age the contract is made is taken to be greater than the actual age of such person, the number of years added to such age shall, for purposes of the calculation provided for by this section, be added to the true age of such person.

Notice before forfeiture of benefit.

By the same Act which provides for the registration of insurance companies, regulations are also made with regard to insuring the lives of children. In too many cases child insurance means child murder, and if it were possible for the Legislature to prohibit it entirely, I venture to think that society would not be the loser. I may mention further that in the case of friendly societies no forfeiture or suspension is incurred by reason of any default in paying any contribution or assessment, except such as are payable at fixed dates, until after notice to the member stating the amount due by him, and apprising him that in case of default of pay-

ment by him within a reasonable time, not being less than thirty days, and at a place to be specified in such notice, his interest or benefit will be forfeited or suspended, and until after default has been made by him in paying his contribution or assessment in accordance with such notice. This notice may be given by written or printed notice to the effect aforesaid delivered or by registered post prepaid sent to the member or left at his last known place of abode by or in behalf of the society.

Lastly, in respect of any contract of insurance for any sum of, or sums amounting to, \$5,000 or upwards, no corporation or agent can make, as between persons of the same expectation of life, and whose lives are otherwise equally eligible, and who are insured on the same plan, any discrimination in the amount of premium charged, or in return of premium dividends, or in payment of bonuses, or in bonus additions, or otherwise.

No agent, or other person soliciting or procuring business for the corporation can make any contract of insurance other than that which is expressed in the policy issued, or to be issued, nor in the case of any contract of insurance for \$5,000 or upwards shall any corporation, agent, or other person, pay or allow, or offer to pay or allow, directly or indirectly, as inducement to insurance any rebate of premium, or any special favour or advantage whatever, other than is specified in the policy.

No person, not being the chief agent or the chief managing officer of the corporation, can directly or indirectly act as insurance agent, sub-agent, or broker, or shall in such capacity under any other designation, solicit or procure any insurance, or application or proposal therefor, for any corporation, without having first obtained an agent's certificate of registry from the Provincial Department of Insurance, for which he must pay an annual license fee.

A person may insure his life for its whole term, or for any definite period for the benefit of his mother or of his wife, or of his wife and children, or of his wife and some or one of his children, or of

No discrimination to be made between the assured when of the same expectancy, etc.

The policy to set out the actual contract and true consideration.

And no rebate or differential rate to be given.

Only persons holding certificates of agency to act as agents of life insurance companies.

Insurance for benefit of wife and children.

R. S. O.  
c. 136.

his children only, or of some or one of them. Where the insurance is effected for the benefit of more than one he may apportion the amount of the insurance money as he may deem proper. The effect of such an insurance is that the policy enures, and is deemed a trust for the benefit of the persons intended to be benefited, and so long as any object of the trust remains the money payable under the policy is not subject to the control of the husband or his creditors, nor does it form part of his estate when the sum secured by the policy becomes payable. This is not held to interfere with any pledge of the policy to any person prior to the declaration. A policy of insurance may be declared to be for the benefit of wife or child, as above explained, by declaration to that effect on the face of the policy, or by indorsement on the policy, or by any writing identifying the policy by its number or otherwise. An apportionment may be varied by an instrument in writing for the benefit of wife and children or any of them attached to or indorsed upon, or identifying the policy by its number or otherwise. The apportionment may be varied either in the way of extending the benefits of the policy or restricting them. A person may, by his will, make or alter the apportionment of the insurance money; an apportionment made by will prevails over any other made before the date of the will, except in so far as the previous apportionment has been acted upon before notice of the appointment by the will. If no apportionment is made, all persons entitled to be benefited by the insurance are held to share equally in it. Where it is stated in the policy or declaration that the insurance is for the benefit of the wife and children generally, or any of the children generally, without specifying the names of the children, the word "children" is held to mean all the children of the insured living at the maturity of the policy, who are the insured's by his then or any former wife, and the wife to benefit by the policy is the wife living at its maturity. A policy so apportioned may be surrendered or assigned as follows:

Where the policy is for the benefit of children only, and the children surviving are of the full age of twenty-one years, the consent must be obtained of the person

insured and all surviving children. Where the policy is for the benefit of both a wife and children, and the surviving children are all of the full age of twenty-one years, the consent of the person insured and his then wife (if any) and of the surviving children must be obtained. If the policy is for the benefit of a wife only, or of a wife and children, and there are no children living, the consent must be obtained of the person insured and his then wife. When the insurance money becomes due and payable, it must be paid according to the terms of the policy, or of any declaration or instrument of apportionment, free from the claims of any creditors of the insured. If the insurance money is for the benefit of the children of the insured, and they are mentioned as a class, and not by their individual names, reasonable proof must be furnished of the number, names and ages of the children entitled. Where infants are concerned a company may pay money into Court, or to trustees or guardians, in cases where the latter are sufficiently authorized to receive the money. If a person who effects an insurance for the benefit of his wife and children, or any of them, finds himself unable to continue to meet the premiums, he may surrender the policy to the company, and accept in lieu of it a paid-up policy for such sums as the premiums paid would represent payable at death or otherwise in the same way as the money insured by the original policy, if not surrendered would have been payable. In this case the company may accept the surrender and grant the paid-up policy, notwithstanding any declaration or direction in favour of the wife and children, or any of them. The person insured may also from time to time borrow on the security of the policy such sums as may be necessary to keep the policy in force, and are so applied. The sums so borrowed, with interest, are, as long as the policy remains in force, a first lien on the policy, and all moneys payable under it, notwithstanding any direction or declaration in favour of the wife and children, or any of them. Any person insured may require the insurance company to pay the bonuses or profits accruing under the policy to the insured, or to apply them in reduction of the annual



premiums, or to add them to the policy. The company must act upon the requisition of the insured to the extent of the liability contemplated by the policy itself. If a policy was effected and premiums paid by the insured with intent to defraud his creditors, the creditors are entitled to receive out of the sum secured an amount equal to the premiums paid. Where all the persons entitled to be benefited under any policy are of full age, they and the insured may surrender the policy or assign it either absolutely or by way of security.

Dominion  
insurance  
legislation

The Dominion legislation as to insurance is briefly as follows:

R. S. C.  
c. 121.

The Dominion Insurance Act is stated to apply to every company carrying on the business of life insurance, and every Canadian company carrying on the business of fire or of inland marine insurance, or of both combined. The Act is expressly stated not to apply to any company transacting in Canada ocean marine insurance exclusively, or to incorporated companies carrying on the business of insurance wholly within the limits of that province by the legislation of which it was incorporated, and which is within the exclusive control of the Legislature of the province; these provincial companies may take advantage of the provisions of the Dominion Insurance Act if they choose. As to all companies to which the Dominion Act does apply a license must be obtained from the Minister of Finance before they can accept any risk or issue any policy. All life insurance companies and all Canadian fire or inland marine insurance companies must deposit with the Minister \$50,000. All foreign companies carrying on the business of fire or inland marine insurance must deposit \$100,000; the object of this deposit is the same as that required by the province, namely, to make good risks taken in Canada. A superintendent of insurance is appointed by the Dominion, who investigates the affairs of insurance companies and reports to the Minister annually. Conditions in life policies are required to be set out in full on the policy. No policy can contain any condition providing that it will be avoided by reason

Deposit  
required.

of any statement contained in the application being untrue, unless the condition is limited to cases in which the statement is material to the contract. No company can carry on within Canada, unless licensed, any mutual insurance business. Companies formed on the co-operative or assessment plan must have a notification printed on the face of their policy in the following words:

"This association is not required by law to maintain the reserve which is required of ordinary life insurance companies." The words "assessment system" must be printed on all policies and companies' forms. No fire policy can be issued for a longer period than three years. The Dominion Insurance Act is declared not to apply to any society or association of persons for fraternal, benevolent, industrial or religious purposes, among which purposes is the insurance of the lives of the members exclusively, or to any association for the purpose of life insurance formed in connection with such society and exclusively from its members, and which insures the lives of its members exclusively.

Building societies under the provincial statutes are formed as follows:

Building societies.

If twenty persons or more agree to constitute themselves a building society and execute under their respective hands and seals a declaration to that effect, and deposit this declaration with the clerk of the peace in the county in which they reside, they and the persons who afterwards become members of the society become a body corporate and politic, styled a building society. The object of the society is to raise by periodical subscriptions in shares not exceeding the value of \$400 for each share, and in subscriptions not exceeding \$4 per month for each share, a stock or fund to enable each member to receive out of the funds of the society the amount or value of his shares for the purpose of erecting or purchasing one or more dwelling houses, or other freehold or leasehold estate, or for any other purpose whatsoever. The amount or value of the shares is secured to the society by mortgage or otherwise on real estate belonging to the member at the time of his bor-

R. S. O.  
c. 169.

rowing money, or on other real estate acquired by him, until the amount or value of his shares with the interest have been fully paid, together with all fines or liabilities incurred in respect of the advance. The society must make rules and by-laws for its government, and may impose and inflict fines, penalties and forfeitures. No rule can be altered or rescinded unless at a general meeting of the members convened by a public notice written or printed, called in pursuance of a requisition made by not less than fifteen of the members. Any general meeting called for the purpose may also by two-thirds of the votes of the shareholders alter the rules. The general management of the company is similar to that of other incorporated companies. The directors may issue debenture stock. The amount received as money deposits and borrowed on the security of debentures or debenture stock, with all the other liabilities of the society, can only be equal to double the amount of the paid-up unimpaired fixed and permanent capital or shares not liable to be withdrawn, together with a further sum, which may be equal to, but cannot exceed, the amount unpaid upon the subscribed fixed and permanent capital upon which not less than twenty per cent. has been paid. In no case shall the total liabilities to the public exceed three times the amount paid upon fixed and permanent shares in the society. The debentures must be not less than \$100, and payable not less than one year after their issue. The operation of building societies has been much extended by the provision which enables them to take and hold any real estate or securities on real estate, bona fide mortgaged or assigned to them, either to secure payment of shares subscribed for by its members or to secure the payment of any liens or advances made by or due to the society. This provision enables these societies to do general investing business, and they have become investment societies instead of being only building societies.

Under the British North America Act, section 92, sub-section 10, certain works and undertakings are exclusively handed over to the province; these are local

works and undertakings; the following works and undertakings are handed over to the Dominion:

(a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province.

Works under Dominion jurisdiction.

(b) Lines of steamships between the province and any British or foreign country.

B. N. A. Act, sec. 92 (10).

(c) Such works as though wholly situate within the province are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces. Under this latter power the Dominion Parliament has declared certain railways to be works for the general advantage of Canada, with every branch line or railway connecting with or crossing over these railways: the Intercolonial Railway, the Grand Trunk Railway, the North Shore Railway, the Northern Railway, the Hamilton and North Western Railway, the Canada Southern Railway, the Great Western Railway, the Credit Valley Railway, the Ontario and Quebec Railway, and the Canadian Pacific Railway. All of these railways are declared to be under the legislative authority of the Parliament of Canada.

A special Dominion Act has been passed relating to the Dominion Government railways; that is, all railways which are vested in the Crown, and which are under the control and management of the Minister of Railways and Canals. Another Act, which is called the Railway Act, applies to all other railways, as presently explained, except Government railways.

Dominion Government Railways.  
R. S. C. c. 38.

Railways wholly within the Province of Ontario not taken over by the Dominion are subject to provincial control.

Thus the legislative provisions of the Province of Ontario apply to these railways. Railway companies generally obtain special railway Acts incorporating them; these Acts are deemed public Acts. The powers given by

Provincial railway legislation.  
R. S. O. c. 170.

Expropriation of lands.

Book of reference.

the special Act to construct the railway and to take and use lands for that purpose, are all subject to the clauses of the General Railway Act. For the value of lands taken and for all damages to lands injuriously affected by the construction of the railway, compensation must be made to the owners, occupiers of the lands, and to all other persons interested. The company when incorporated has the general power to take land for the purpose of building the railway. A branch not exceeding six miles in length may be constructed whenever a by-law sanctioning that branch has been passed by the municipal council of the municipality; this branch is not subject to any of the restrictions on the main line under the general Act, or in any special Act of incorporation, as to quality and construction. All lands must be settled for before being taken by the company. No railway has power to extend its line beyond the termini mentioned in the Act incorporating the company. Surveys and levels are required to be made; a book of reference is also required containing a general description of the lands to be taken, the names of the owners and occupiers, and everything necessary for the right understanding of the map or plan. This map and book of reference must be certified by the Commissioner of Crown Lands or his deputy; notice must be deposited in the offices of the clerks of the peace in the districts or counties through which the railway passes, and also in the office of the Provincial Secretary. One copy is also delivered to the company. Any person who objects to the proposed location of the line may within ten days apply to the Lieutenant-Governor in council setting out his objections, and the Lieutenant-Governor may appoint an engineer to examine the proposed line. The determination of the engineer must be made within ten days, and when approved by the Lieutenant-Governor, be certified and filed in the office of the clerk of the peace for the district or county where the lands are situated. Omissions in the map or book of reference may be corrected by two justices of the peace. Until the original map or plan and book of reference with alterations have been deposited, the execution of the railway or altera-

tions cannot be proceeded with. The lands which may be taken without the consent of the owner must not exceed thirty yards in breadth, except in places where the railway is raised more than five feet higher or cut more than five feet deeper than the surface of the land where the offsets are established, or where stations, depots or fixtures are intended to be erected or goods to be delivered, and then not more than two hundred yards in length by one hundred and fifty yards in breadth. All persons who have a right to convey lands may contract for sale and convey to the company the lands required. Limited powers over lands may be exercised to the extent given by those powers. Any contract, agreement, sale, conveyance or assurance vests in the company the fee-simple of the land, freed and discharged from all trusts, restrictions and limitations whatever, when the persons conveying have power to convey a fee-simple. The company is not responsible for the disposition of any purchase money if paid to the owner of the land or paid into Court. Any contract made with any joint tenant or tenant in common who is proprietor of one-third of the land is binding as to the other proprietor or proprietors. If the company has reason to fear any claims or incumbrances, or if any person to whom the compensation is payable refuses to execute the proper conveyance and agreement, or if the person entitled to claim the money cannot be found, or is unknown to the company, or if for any other reason the company deem it advisable, they may pay the compensation into the office of the accountant of the Supreme Court of Judicature with interest for six months. A notice must be inserted in some newspaper stating the title of the company, if any, and calling upon all persons who are entitled to the land to file their claims. The Court then adjudicates on the claims received, the company holding the amount. After one month from the deposit of the map or plan and book of reference, and from notice in at least one newspaper in each of the districts and counties through which the railway is intended to pass, application may be made to the owners

Extent of  
land which  
may be  
taken.

Compensation for  
land.

Arbitra-  
tion.

of lands or to persons empowered to convey land, or interested in lands which may suffer damage from the building of the railway, and thereupon agreements and contracts may be made relating to the lands or the compensation to be paid. In case of disagreement, a notice must be served upon the party by the company containing a description of the lands, stating the amount which the company is ready to pay for the land and the name of some person as the company's arbitrator. There must also be a certificate of a surveyor for Ontario defining the land and stating that in his opinion the sum offered is a fair compensation. If, within ten days after the service of the notice or publication, in case the owner is unknown the opposite party does not notify to the company his acceptance of the sum offered, or furnish the name of his arbitrator, then the Judge of the County Court must appoint a surveyor as sole arbitrator. If the opposite party notifies the name of his arbitrator, then the two arbitrators jointly appoint a third; if they cannot agree upon a third, then the Judge must appoint a third; the arbitrators then proceed to decide on the question of compensation. They are authorized and required to take into consideration the increased value that would be given to any lands or grounds through or over which the railway will pass by reason of the construction of the railway, and to set off this increased value against any losses or damage which may be sustained. Evidence may be taken before the arbitrators. They must make their award and transmit the depositions and all papers connected with the reference except the award to the clerk of records and writs of the Chancery Division of the High Court. Any party to the arbitration may, within one month after receiving a written notice from one of the arbitrators of the making of the award, appeal to a Judge of the High Court; this appeal proceeds in the same way as other appeals from a Judge of the County Court. Upon payment or legal tender of the compensation to the person entitled to receive the amount, or upon the deposit of the amount of the compensation in the manner above stated in Court, the award or agreement vests in the company the power to



take possession of lands, or to exercise the right, or to do the thing for which compensation has been awarded; if there is any resistance, the Judge may issue his warrant to the sheriff or to a bailiff to put the company in possession, which the sheriff or bailiff must do. To obtain this warrant proof must be made that the immediate possession of the lands, or of the power to do the thing mentioned in the notice, is necessary to carry on some part of the railway with which the company are ready forthwith to proceed. The company may also give security to the Judge's satisfaction and in the sum of not less than double the amount mentioned in the notice to pay, or deposit the compensation to be awarded within one month after the making of the award, with interest and costs. The company is not entitled to any mines, except only such parts as are necessary to be dug or carried away, or used in the construction of the works, unless they have been expressly purchased. If the owner of mines lying under the railway or on the right-of-way, or within forty yards therefrom, desires to work the mine, he may do so if the company will not agree to compensation. No working of mines can be allowed to the prejudice of the working of the railway. Special provisions are made as to highways and bridges and as to fences. The company is allowed to charge tolls for carriage of passengers and freight. A right of sale is given of goods if freight is not paid within six weeks. The general management of railway companies is similar to that of other incorporated companies. Rules are laid down as to the working of the railway and as to by-laws. Every action for indemnity for damage or injury sustained by reason of the railway must be instituted within six months after the time of the damage.

It is not within the proper province of these pages to give detailed information as to general liabilities of railway companies or as to their powers of traffic arrangements. The security of the public has been guarded as far as it can be done in dealing with a country of such great extent as the Province of Ontario.

The council of any municipality may pass by-laws for opening or altering any highway or drain across the

Warrant  
of possession.

Mines.

Tolls.

Opening  
roads  
across  
railways.

R. S. O.  
c. 199.

railway and lands of any railway. The highway or drain must be within the jurisdiction of the council. It may also pass by-laws for laying down, across, under or along the lands of any railway any main pipe for water works which the corporation is authorized to construct. Before the final passing of these by-laws the council must procure plans and estimates in detail of the work to be carried out, and give notice to the railway company of the proposed by-law. If it is intended that the work shall be carried not by a tunnel under the railway nor by a bridge over the railway, but on what is called a level crossing, then planking must be provided for, so that the upper level of the planking must be as nearly as practicable level with the top of the rails. Cattle guards must also be provided and fences with sign-boards warning the public that it is a railway crossing. If the work is to be by drain or water-pipe an outlet must be allowed. The railway company must within thirty days make objection, if any; if not, the council may proceed with the work. If the railway company chooses it may itself execute the work, and shall be entitled to receive payment from the municipality according to the estimate made by the municipality. If no agreement can be arrived at between the council and the railway company, then the Commissioner of Public Works must settle the dispute, and his decision is final; when he has made his decision the railway company may within ten days elect that they will do the work themselves at the price fixed; if they do not proceed with the execution of the work with due diligence, the council may themselves perform the work, or may apply for a mandamus to compel the company to do so. If the lands of the railway company taken or used by any council are injuriously affected, the council must make compensation for any damages; where the damage arises in respect of a highway, the compensation must not exceed one-half the value of the lands taken; where the damage results in respect of a public drain, the compensation can only be required where the drain is not a covered drain carried under the highway and below the level to at least a depth of five feet, and the com-

pensation in that case cannot exceed the value of the lands taken. In case of dispute, the compensation in all cases is settled by arbitration. If there is no claim for extra compensation, then the Commissioner of Public Works may consider the matter, and may direct the amount to be determined by arbitration. All street crossings must be kept in proper repair by the railway company and all drains by the municipality. If the highway crosses the railway without being carried over by a bridge or under by a tunnel, it is the exclusive duty of the council to establish, keep and maintain the highway so that the level where it approaches and adjoins the railway for a reasonable distance does not rise or sink more than one inch above or below the track; and the railway company must keep that part of its railway crossed by the street or highway so that it does not rise above or sink below the track more than one inch. All the provisions of the Municipal Act relating to public highways apply as far as possible to highways established or opened over railway tracks.

The Dominion Railway Act applies to all persons, companies and railways within the legislative authority of the Parliament of Canada, except Government railways. All the provisions of the Act relating to any subject or matter within the legislative authority of the Parliament of Canada and for greater certainty, but not so as to restrict the generality of its other terms or provisions, especially those relating to railway crossings, junctions, offences, penalties and statistics, apply to all railways whether within the legislative authority of Parliament or not. The provisions of the Act relating to the management of the company as an incorporated company do not apply to every company and railway within the legislative power of the Parliament of Canada, but apply to every company whose authority to construct or operate any railway is derived from the Parliament of Canada, and to every railway constructed or to be constructed under the authority of any Act passed by the Parliament of Canada, and also to every company and railways to which those provisions are made appli-

Dominion  
railway  
legislation.

51 Vict.  
c. 29  
(Dom.)

Railway  
Committee  
of the  
Privy  
Council.

Forfeiture  
of charter.

cable. These provisions are to be incorporated with any special Act incorporating a company. Any company may apply to the council for an order to make these sections applicable to that company, and the council may thereupon make them applicable to the company so applying. A committee of the Privy Council is formed, called the Railway Committee, consisting of the Minister of Railways and Canals and the Minister of Justice, and of two or more of the other members of the Privy Council for Canada; three of the committee form a quorum. It has power to regulate the rate of speed, to regulate steam whistles, safety of employees, and impose penalties; it has power to hear and determine applications as to any right-of-way, changes of location, construction of branch lines, crossings of tracks, location of tracks, use of tracks, construction of works in waters or over highways, cost of fencing, compensation for work, tolls, running powers, traffic arrangements, unjust preferences, and any other matter coming within the purview of the Railway Act or any special railway Act. It has the power to enforce the attendance of witnesses and to compel them to give evidence and produce all books, papers or documents; if necessary it may state a case to the Supreme Court of Canada; its decision is final, except that any party affected may petition the Governor in council; he may in his discretion rescind, change or vary the order of the committee. The provisions of the Act above referred to relating to the management of the company, as a company, are similar to those of the provincial Act. If the construction of the railway is not commenced, and fifteen per cent. of the amount of the capital stock not expended on the road within two years after the passing of the Act authorizing the construction of the railway, or if the railway is not finished and put into operation within seven years after the passing of the Act, then the powers granted are null and void. The general powers of railway companies are similar to those given by the provincial Act; the map or plan and book of reference must be deposited in the Department of Railways. Lands required are obtained by arbitration. Farm crossings may be made for the

crossing of the railway by farmers' implements, carts and other vehicles, and fences and cattle guards must also be maintained on each side of the railway of the height and strength of an ordinary division fence. Until fences and cattle guards are duly made and completed, and if after being made and completed they are not duly maintained, the company is liable for all damages done to cattle, horses and other animals not wrongfully on the railway, and having gone there in consequence of the omission. After having been duly made and completed, and while they are duly maintained, no liability accrues for any damages unless they are caused wilfully or negligently by the company or its employees. At every public road crossing at rail level by the railway the crossing must be sufficiently fenced on both sides so as to allow the safe passage of the trains. The persons for whose use farm crossings are furnished must keep the gates at each side of the railway closed when not in use. No person, any of whose cattle are killed by any train owing to the non-observance of this rule, has any right of action against any company in respect of his cattle being killed; he is also for wilfully leaving any such gate opened liable to a fine of \$20. Railways must be inspected before being opened, and alterations must be made as required by the inspecting engineer after the railway is opened.

Farm crossings.

A company may regulate the tolls to be demanded of passengers and goods transported upon the railway. In case of refusal or neglect to pay tolls the company may recover them by suit or action; the goods may be seized and detained until payment; if not paid within six weeks, the goods may be sold. Goods remaining in the possession of the company unclaimed for twelve months may, after six weeks' public notice, be sold by public auction; the proceeds must be applied to pay storage charges; the balance, if any, must be kept by the company for a further period of three months, to be paid over to the person entitled; in default of claim for this balance, it must be paid over to the Minister of Finance for the public uses of Canada until claimed by the person entitled. Railway companies must use the

Sale of goods unclaimed.

Checks on  
luggage.

best appliances possible for communication and for stopping trains. Checks are required to be affixed to every parcel or package having a handle, loop or fixture, and a duplicate of the check must be given to the passenger; if a check is refused the company must pay to the passenger the sum of \$8, which is recoverable in a civil action; no fare or toll can be collected, and if he has paid the fare it must be refunded by the conductor. Any person requiring the company to send dangerous goods must mark their nature on the outside of the package containing them, and otherwise give notice in writing to the company; in default of so doing such person is liable to forfeit to the company \$500. The company must not carry dangerous goods except in special cars, on which must appear the words, "dangerous, explosives"; if the company neglects to comply with this requirement it incurs a penalty of \$500. Provisions are made as to the speed of trains through cities and towns. No horses, sheep, swine, or other cattle are permitted to be at large upon any highway within half a mile of the intersection of the highway with the railway unless in charge of some person. Any cattle found within this limit at large may be impounded; and if they are killed or injured by any train at the point of intersection there is no right of action against the company. No cattle are allowed to be taken within the fences of the railway without the consent of the company, and no person is allowed to walk along the track; infringement of these rules is punishable by fine. All actions for damages sustained by reason of the railway must be commenced within one year from the time when the damage was sustained, or if there was a continuation of the damage, within one year next after the damage ceased.

Passenger  
tickets.

R. S. C.  
c. 110.

The sale of railway passenger tickets is specially provided for. Railway companies may appoint ticket agents; the Minister of Railways and Canals appoints ticket agents for Government railways. Every ticket sold by any agent must have the name of the agent and the date of the sale written or stamped upon it. No person except authorized ticket agents is allowed to sell

railway passenger tickets. If a person other than an authorized ticket agent sells railway tickets he is liable to fine or imprisonment, or both fine and imprisonment. Every holder of a ticket who has an unused ticket is entitled to a refund of the cost of his ticket less the ordinary and regular fare for the distance for which the ticket has been used; the repayment must be made at any station between the points covered by the ticket; the claim for redemption must be made within thirty days from the expiration of the time for which the ticket was issued. Every passenger who presents a single journey ticket upon a train within the time for which the conditions printed upon such ticket, and the date shows such ticket to be good for use, may apply to the conductor of the train to have the privilege of stopping over granted and the time for which the ticket is valid extended; the limit of extension is not more than two days for every fifty miles of distance to be travelled in Canada.

Unused  
railway  
ticket.

Stop-over  
tickets.

I have now, after following the arrangement I have laid down,\* arrived at the close of the consideration of the mode of formation of companies for carrying on the business of banking and insurance, of building societies and of railway companies. The legislation as to banks and banking is solely by the Dominion. By reference to the table of cases on page 22 it will be seen that the right of the province to legislate on the subject of insurance has been upheld.† But we have also seen that as there are insurance companies which desire to effect insurance in any part of Canada, and not only in any one province, the Dominion Parliament has legislated for these companies, and they have to follow the requirements laid down by both the

\* See page 391, *ante*.

† In No. 2 of section 91 the words "regulation of trade and commerce" include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be, general regulation of trade affecting the whole Dominion; but do not include the regulation of the contracts of a particular business or trade, such as the business of fire insurance in a single province, and therefore do not conflict with the power of property and civil rights conferred by section 92, No. 13. *Citizens v. Parsons*, 7 L. R. App. Cas. 96.



Dominion and Province. Building societies are subject to provincial legislation, although the Dominion also assumes to grant charters to building societies desiring to do business in more than one province. As to railways, we have just seen that both Dominion and provincial legislation must be studied, and we are therefore able to close this part of our subject with some knowledge of the practical working in these respects of the constitution laid down for us in the British North America Act.

*Statutes Relating to Foregoing Subject of Incorporation of Companies.*

ONTARIO STATUTES, R. S. O.

PAGE.

- 392..General Clauses Act—c. 156; 1889 c. 26.  
 396..Letters Patent Act—c. 157; 1889 c. 26; 1891 cc. 32, 33; 1894 c. 16, sec. 17.  
 \* ..Telegraph Companies—c. 158.  
 ..Road Companies—c. 159; 1889 cc. 27, 28; 1890 c. 42; 1892 c. 86; 1894 c. 46; 1895 c. 81.  
 ..Timber Slide Companies—c. 160; 1889 c. 16; 1890 c. 43; 1892 c. 87.  
 ..Companies for Building Piers—c. 161.  
 ..Companies for Exhibition Buildings—c. 162.  
 ..Roads by Mining Companies—c. 163.  
 ..Gas and Water Companies—c. 164; 1892 c. 38; 1893 c. 29; 1895 c. 33.  
 ..Steam Heat, Electric Light—c. 165.  
 ..Co-operative Associations—c. 166.  
 ..Benevolent and Provident Societies—c. 172; 1886 c. 26; 1892 c. 89; 1895 c. 39.  
 ..Immigration Aid Societies—c. 174.  
 ..Cemetery Companies—c. 175; 1888 c. 27; 1891 c. 41; 1895 c. 40.  
 ..Cemetery Companies, Incorporation of—c. 176.  
 ..Cemetery, Conveyance to Trustees for—c. 177; 1890 c. 48.  
 ..Changing Names of Companies—c. 178.  
 ..Guarantee Companies—c. 181.  
 ..Investments by Corporations—c. 182.\*  
 394..Directors' Liability Act—1891 c. 34.  
 294..Fraudulent Statements by Companies—1893 c. 33.  
 400..Winding Up Act—c. 183; 1890 c. 49.

DOMINION STATUTES.

- 402..Companies Clauses Act—c. 118.  
 402..Companies Act—c. 119; 1887 c. 20.  
 402..Electric Telegraph Companies—c. 132.  
 402..Immigration Aid Societies—c. 66.  
 403..Winding Up Act—c. 129; 1889 c. 32; 1892 c. 28; 1895 c. 18.

\* The statutes between asterisks are only mentioned in the text.

*Statutes Relating to Banks.*

## DOMINION STATUTES.

409.. Banks and Banking—1890 c. 31.

\*.. Savings Banks in Ontario and Quebec—1890 c. 32.

*Statutes Relating to Insurance Companies.*

## ONTARIO STATUTES, R. S. O.

415.. Ontario Insurance Act—c. 167; 1888 c. 25; 1889 cc. 30, 31; 1890 c. 44; 1891 c. 37; 1892 c. 39; 1893 c. 32; 1895 c. 34.

422.. Insurance Corporations Act—1892 c. 30; 1893 c. 32; 1894 c. 48; 1895 c. 39.

427.. Insurance for benefit of Wives and Children—R. S. O. c. 136; 1888 c. 22; 1890 c. 39; 1892 c. 39; 1893 c. 32; 1894 c. 48; 1895 c. 34; 1896 c. 45.

## DOMINION STATUTES.

430.. Insurance Act—c. 124; 1888 c. 28; 1894 c. 20; 1895 cc. 19, 20.

*Statutes Relating to Building Societies.*

\*.. Loans by British Companies—R. S. C. c. 125.

\*.. Loan Companies out of Ontario—R. S. O. c. 168; 1893 c. 30; 1894 c. 47.

431.. Building Societies—R. S. O. c. 169; 1889 c. 34; 1890 c. 12; 1891 c. 38; 1892 c. 40; 1893 c. 31.

*Statutes Relating to Railways.*

## ONTARIO STATUTES, R. S. O.

433.. Ontario Railway Act—c. 170; 1890 c. 45; 1891 c. 39; 1895 c. 35.

438.. Crossing of Railways by Streets, Drains, and Watermains—c. 199.

\*.. Street Railway Act—c. 171; 1890 c. 47; 1891 c. 40.

\*.. Railway Lands—1895 c. 37.

\*.. Electric Railway Act—1895 c. 37.

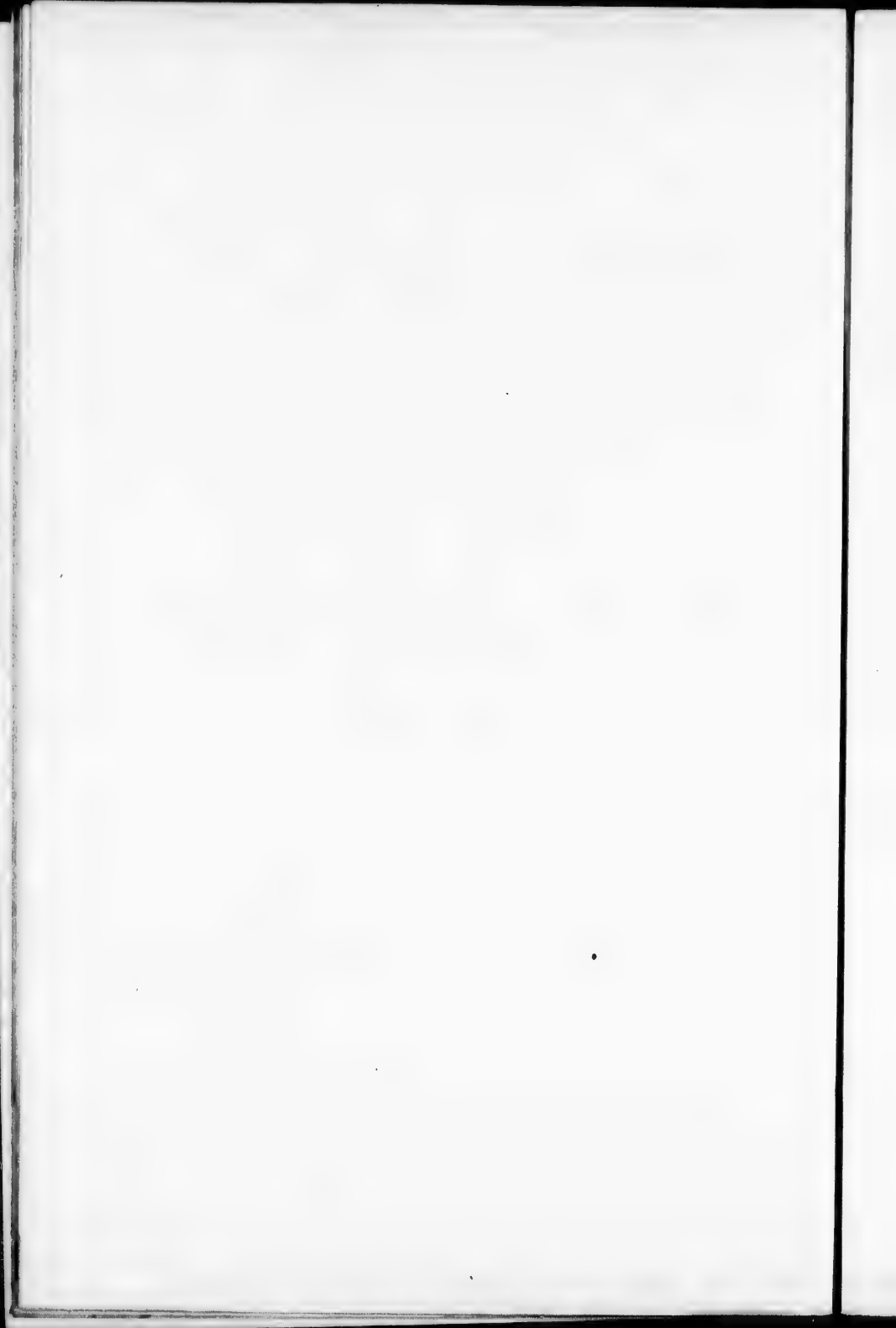
## DOMINION STATUTES.

439.. Railway Act—1888 c. 29; 1890 c. 28; 1891 c. 51; 1893 c. 27; 1894 c. 53.

442.. Railway Passenger Tickets—R. S. C. c. 110.

\* Statutes marked thus not dealt with in the text. All statutes thus referred to in the various tables of statutes are those which I have omitted for my own reasons, but to which I consider I should refer the reader by mentioning them in the tables, as they have more or less intimate relation with the subjects dealt with.

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